A. That's in the 12th Legislative District which I represented in the Legislature.

The Court: All right.

Mr. Nelson:

Q. O. K. But you still live in Stowe Township, don't you?

A. I do live in Stowe Township.

Q. As such, naturally you would know and you would be quite closely acquainted with political matters that go on in Stowe Township and the surrounding area?

A. No, I am not familiar with the political activities in Stowe Township. I purposely abstain from participation in local politics in the sense that you mean it.

Q. I see. Well, are people—are the following political figures known to you, people who I believe are in that area——

Mr. Lewis: I object to that.

The Court: Oh, yes, we will sustain the objection. I don't [fol. 1007] see that there is any relevancy in this.

Mr. Nelson: Well, your Honor, you don't know what I am going to try to bring out, and I think the jurors are entitled to know——

The Court: If you want to make an offer, come forward and we will rule on it as we did on the other one.

(At Side Bar):

Mr. Nelson: I want to show that this man's claim of being so impartial, I want to show by the type of people that are in that area, in the political circles in that area, I mean some people——

Mr. Cercone: Who are you talking about?

Mr. Lewis: Wait a minute now——

Mr. Nelson: I mean certain officials in that area. First of all, members of his family are in this case——

Mr. Cercone: Now you are crazy.

[fol. 1008] Mr. Nelson: Is that a proper remark, your Honor?

The Court: We will strike it from the record, although the jury did not hear it.

Mr. Nelson: There are individuals in the surrounding

area like McKees Rocks, which is part of that area, there are individuals like the Burgess of this town who has worked for this man; there's the Chief of Police in that Township, Antonelli——

The Court: Do you want to bring out his associates?

Mr. Nelson: That's right, the associates in that area. I'm not going to go beyond that. I believe that's an important point and the jurors should know. I want to show this man's credibility,—rather, this man's integrity—on that question should be up to the jury to decide and not anyone else.

Mr. Lewis: This is all objected to.

[fol. 1009] The Court: The objection is sustained to the offer.

Exception noted.

(End of Side Bar.)

Mr. Nelson:

Q. Mr. Musmanno, are any members of your family on the payroll of the State, or County, or Township that you come from?

Mr. Lewis: This is objected to.

Objection sustained.

Exception noted.

Mr. Nelson:

Q. Well, it is a fact, isn't it, Mr. Musmanno, you have a number of people——

Mr. Lewis: This is objected to.

The Court: Just a minute. Wait until he——

Mr. Lewis: He is just putting it in another way.

Mr. Nelson: You don't know what I'm going to ask.

[fol. 1010] The Court: Well, if it's the same question expressed in a different way, it has been ruled on. If it's a different question, why, proceed.

Mr. Nelson: Well, your Honor, you are making it impossible for me to proceed in an important examination of this witness. I want to show this man has——

The Court: No. Come up here if you want to offer any

thing else. We have ruled on your previous two offers and we will rule on this one.

(At Side Bar):

Mr. Nelson: First of all, your Honor, it is a simple proposition. I want to show that this man has a number of members of his family in the political tie-up with him and that they together are a little clique who exercise a good deal of influence and have been playing a role in this prosecution directly against me, and I think that the jurors are entitled [fol. 1011] to know that he is not an unbiased person, he has a personal axe to grind.

The Court: I will permit you to ask it to a limited extent, if you know about any witness involved in this, I will let you ask him that question, but don't just generalize——

Mr. Nelson: Your Honor, in order to question him properly——

The Court: Well, I have sustained the objection on that except to the extent I have indicated.

(End of Side Bar.)

Mr. Nelson:

Q. It is true, is it not, Mr. Musmanno, that you have a number of members of your family who are tied together with you in politics——

Mr. Lewis: I object to that——

Mr. Nelson:

Q. —who are pushing this, or they are cogs in the wheels of this machine or means of prosecution against me?

[fol. 1012] Mr. Lewis: That's exactly what the Court ruled out, and I object to the tactics which Mr. Nelson uses.

The Court: Oh, no, it isn't. I told him he might ask the witness whether or not there are any relatives of the witness who are involved in this proceeding.

Mr. Lewis: But that isn't what he is asking him.

The Court: That's the interpretation the Court puts on it.

The Court:

Q. Are there any members of your family involved in this prosecution, Mr. Musmanno, in any way?

A. I will first reply to the defendant's question and resent his referring to any members of my family as cogs——

Mr. Nelson: Well, your Honor, I think he ought to be asked to answer the question——

A. Well, I am answering your question, Mr. Nelson. You are the one who put the question. I am answering it——

[fol. 1013] Mr. Nelson:

Q. You are making a speech. You aren't answering the question.

The Court: He is answering your question. He has a right to resent the use of terms and he says that his people are not cogs in a machine. Now he is telling you that and now he will answer the question.

Mr. Nelson: Well, as a layman, that's the way I put it——

The Court: Well, all right, that's understood probably.

A. (continued) There is only one individual in my family, if you want to term it as such,—being unmarried I do not have ~~an immediate family~~—but as you yourself brought out only yesterday, one of the assistant district attorneys is a nephew of mine, who, incidentally, was an assistant district attorney three or four years before you were arrested, and his participation in the case was due entirely to the activities of the District Attorney's Office over which I have absolutely no control. No other member of my family is interested in this prosecution except what sympathetic interest they may have in my own activities and also in the [fol. 1014] defense of our country.

Mr. Nelson: Well, your Honor, is that as far as I can go on this question?

The Court: If you know of any other relative involved in this proceeding that has not been mentioned by the witness, you may ask specifically if a certain person is involved in any way. However, you can't go fishing and just ask gen-

erally. The witness has answered the question. If you can put a specific question to him of a relative that's involved in any way in this proceeding, you may do so.

Mr. Nelson:

Q. Don't you have—do you or don't you have a brother that has worked in this Court House for a long time?

A. He has nothing to do with this case whatsoever. And, as I indicated to you before, the only relative is the one whom you yourself mentioned and is an assistant district attorney. That answer stands categorically and without exception.

Mr. Nelson: Your Honor, I can't go into the question of whether——

[fol. 1015] The Court: I have ruled on it, Mr. Nelson, and you have an exception. If I am wrong your exception will protect you.

Mr. Nelson: I think it would be interesting for the jury to find out——

Mr. Lewis: I object to these speeches.

The Court: If there is no evidence of any other connections you are limited in what you may ask the witness in accordance with the previous ruling.

Mr. Nelson: All right.

Mr. Nelson:

Q. To go back to one question that I don't think was brought out clearly yesterday—and I believe I have a right to go back to a question that we went into yesterday—that is this——

The Court: Unless it is repetitious. If it is to clarify something; yes, you may go back——

Mr. Nelson: Well, it is repetitious but it would have to be [fol. 1016] clarified, your Honor.

Mr. Nelson:

Q. You stated that you were the Presiding Judge of this County at the beginning of this month?

A. I was not the Presiding Judge of this County at the beginning of this month or any month.

Q. I mean last month.

A. Or last month; I was never the Presiding Judge of this County.

Q. The Court, the Judges of this——

A. No, I was not the Presiding Judge of—I was the presiding Judge in accordance with the rotation system.

Q. Well, I don't think that—I'm not interested in quibbling over details, I'm interested in knowing whether or not you were what is commonly called, I believe, the Presiding Judge?

The Court: Was he assigned as Presiding Judge in Criminal Court?

Mr. Nelson: That's right.

The Court: Which month? This month or last month?

Mr. Nelson: Last month.

[fol. 1017] The Court: December 1951.

A. In December 1951, in accordance with the rotation system which periodically brings every Judge to the Presidency of the Criminal Courts and not of all the Courts——

Mr. Nelson:

Q. I understand——

A. —I was presiding, but in a very limited capacity last month, because of the fact that this case was coming up. In order to abstain from any most remote participation in what might transpire in this case, I limited my activities as Presiding Judge of the Criminal Courts in the month of December.

Q. But from what you said it is true, is not, Mr. Musmanno, that an average person would not know or could not possibly draw a clear conclusion how the Judge for this particular trial was selected?

Mr. Lewis: This is objected to as being speculative.

Objection overruled.

A. I think that that proposition was clarified completely when the subject was brought up. If you wish to have me answer it again, and the Court permits, I will gladly go into it again.

[fol. 1018] Mr. Nelson:

Q. Let me ask you, isn't this what you testified: You stated that the signs are put up at various rooms and then the Judges see the signs and they go into those rooms, and then they find whatever cases there are before them and they try them; is that your testimony?

A. My testimony was——

Q. I mean, that's the way I understood it.

A. Well, I don't think you stated it rather correctly and certainly not clearly. What I stated was this, that cases are listed for trial each day and that trial list is called in the Assignment Room. A clerk or an assistant district attorney is in charge of the list in order to regularize it and to see that the business of the Court keeps moving. As a court room becomes vacant the next case which is ready for trial goes to that empty court room, and so on, until the list is completed for the entire day. If the list is not completed then whatever is left over is taken up with the list on the following day.

Q. All right. Is it your testimony now that any other Judge in this Court might have gotten this case that morning; that there was no previous discussion; that there was no previous arrangement of any sort that the case go to a particular Judge? Is that your testimony?

A. The testimony was very clear and the statement of the Court was very clear several days ago as to how this case came to this court room. In order that I would have no contact whatsoever with the prospective jurors I did not [fol. 1019] go into Court Room No. 1 but Judge Montgomery went into Court Room No. 1 and handled all the work of the Presiding Judge, and then he took one of the panels, because there are two panels of jurors, and that panel happened to be the panel from which the jurors trying your case was to be drawn. When, in the selection of a jury for any particular case, one panel is exhausted, then you have recourse to the other panel.

Mr. Nelson: Well, your Honor, I don't wish to prolong this, but let it be stated for the record that I don't believe that the answer——

Mr. Lewis: I object to that, any opinion he has——

The Court: Was responsive? Is that what you mean?

Mr. Nelson: That the answer was responsive to my question.

The Court: Oh, I think it is.

Mr. Nelson: I don't believe it clarified the question.

[fol. 1020] The Court: We will rule it as responsive, and grant you an exception.

Mr. Nelson:

Q. Now, another matter that we—that I wish to go back to for a minute: You testified yesterday that you entered my home in the City of Philadelphia while I was sick, and I believe it was your testimony that you had no warrant neither for a warrant of arrest nor a warrant for a search of the premises; is that correct?

A. I testified as follows, in brief: I went to the Superintendent of Police in Philadelphia and asked him what knowledge he possessed as to your physical condition, because it had been reported that you had said you were unable to come to Pittsburgh. I had information to the effect that you had left your apartment many times; you were seen to be conferring with well known Communists in Philadelphia outside of your home. I was naturally tremendously interested in knowing when you were coming back to Pittsburgh in order that this case might be tried. I asked the Superintendent of Police to make inquiries. He assigned two city detectives to make this inquiry and they asked that I go along, and I went along with them, and, of course, you know what happened.

[fol. 1021] Q. I see——

The Court:

Q. So, in other words, you went without warrant of entry or seizure? The question was whether——

Mr. Nelson: I'll follow that up.

The Court: All right.

Mr. Nelson:

Q. I want to get a plain answer to the question. Did you have a warrant of arrest? Answer "Yes" or "No".

A. You were not arrested; there was no purpose of arresting you and there was no warrant of——

Q. Answer the question, please——

A. I am answering it. There was no occasion for a warrant of arrest——

Mr. Nelson: Now, your Honor.——

A. (continued) No, there was no warrant of arrest and you were not arrested——

Mr. Nelson: Now, your Honor——

The Court: He said there was no warrant.

[fol. 1022] A. You were already arrested——

Mr. Nelson:

Q. In other words, you had no warrant for arresting me?

A. We didn't need a warrant to arrest you, you were arrested and you were then under Bond and I wanted to make sure that you didn't skip that Bond as other Communists skipped their Bond; that was the purpose of my going there.

Q. You had no warrant to search the house, did you—or did you not?

A. There was no search made; there was no intent to search your home. These police went there merely to see whether your were immobolized or not. And they walked in as you yourself stated and not as you very incorrectly stated to the newspapers, and you were the only one who gave that information to the newspapers——

Mr. Nelson: Well, your Honor——

A. (continued) They walked in and showed their official authority——

Mr. Nelson: I am asking a simple question, your Honor, and you are permitting him to go all over the lot here.

The Court: You have been permitting him. I have been sitting here waiting for you to object. You haven't objected, so if you want me to strike his remarks out as [fol. 1023] unresponsive, I'll do so. You asked him whether he had any warrant of search or warrant of seizure——

Mr. Nelson: And he was unresponsive.

The Court: His answer was "No." He went on and elaborated which, of course, was beyond——

Mr. Nelson: The second question was, did he have a search warrant and the answer could have been "Yes" or "No", and he proceeded to make another speech.

The Court: Well, we will strike the unresponsive remarks from the record, if you so desire.

Mr. Nelson: All right. I move that they be stricken.

Mr. Nelson:

Q. So you knew at the time you entered my home, Mr. Musmanno, that you had no legal right whatever to walk into my home—did you or did you not know?

A. I did have the legal right. I went with officers of the law——

Q. Well, all right, you answered——

[fol. 1024] The Court: Let's not ask about legal rights; let's elicit facts. The facts have already been elicited and this trial is proceeding to such an extent now that I certainly want to avoid any repetition. If there is anything to be clarified, that's one thing, but if it's something that has been testified to without purpose, that's something else.

Mr. Nelson: I think the Court ought to note that I have been patiently trying to get this simple answer——

The Court: He has answered he entered without warrant of any kind. Now, whether that was legal or illegal has no place here.

Mr. Nelson: Well, my point, your Honor, is that this man is in the habit of building up these illegal acts——

Mr. Lewis: Now, I object to that and make a motion that it be stricken from the record.

The Court: You may argue that to the jury. I am ruling on the evidence here and the evidence alone. I say you [fol. 1025] have been over this field of the evidence and I will not permit it to be gone over again.

Mr. Nelson:

Q. Then the answer is, is it not, Mr. Musmanno, that you entered my home without a warrant, either for arrest or for a search?

A. I had an oral warrant, no written warrant, to enter your home.

Q. I see; that's something new, isn't it?

A. No, I was warranted in my entrance into your home after you opened the door and allowed them to come in.

The Court: Let's not debate something now——

Mr. Nelson:

Q. You mean the Police Department couldn't have done all of the things that were necessary without you?

Mr. Lewis: This is objected to.

The Court: Objection sustained.

A. I didn't say that.

Mr. Nelson:

Q. Well, that's the inference. You came along with the police.

A. They asked me to accompany them.

[fol. 1026] Q. I see. The fact is, Mr. Musmanno, that one of the detectives stood in the house and he was so embarrassed——

A. Are you testifying or asking a question——

Q. I'm asking you, is it not a fact, Mr. Musmanno, that one of the detectives said, "I'm sorry that I had to come here under these circumstances." He saw me lying on the bed there, and you came in there obviously for the purpose of tormenting me, and he apologized for it as you walked out of the door——

The Court: Now wait a minute——

A. He did not apologize. That is a fabrication of your own mind. That's an absolute falsehood, Mr. Nelson, and sneering doesn't change the fact.

The Court: The proper question, Mr. Nelson, would be to ask if the officer made such and such a remark. Now, if you want to ask him that, that's proper.

Mr. Nelson: Well, this man wouldn't admit anything that would hurt his case——

The Court: You have a right——

Mr. Nelson: —even though he is under oath, and what [fol. 1027] can I do about it?

Mr. Lewis: Now I object to all this——

A. And which you are not.

The Court: You have the right to testify in your direct examination as to anything that occurred there, in rebuttal of his statement.

Mr. Nelson:

Q. Now, Mr. Musmanno, I show you a copy ——

The Court: Have it marked as an exhibit number.

Mr. Nelson:

Q. Yes, of the Pittsburgh Sun-Telegraph of May 1937——

Mr. Lewis: Have it marked——

Mr. Nelson:

Q. Are you familiar with this article in this newspaper?

Mr. Lewis: Now, I object to it until we at least see this.

The Court: Well, he has asked the question. It need not be answered until it is marked and the exhibit shown to the witness.

[fol. 1028] (Defendant's Exhibit "B" marked for the purpose of identification.)

Mr. Lewis: I would like to have an offer at Side Bar in connection with this.

(At Side Bar):

Mr. Nelson: Well, just as I wanted to show and I am attempting to show that this man is arbitrary and eccentric in many ways, and acts—takes the law in his own hands and resorts to those kind of things; that he has done it as proven by this letter which is written, and by himself, and I will ask him whether he wrote it or not, and if he denies it that's where the matter will go, but I believe it has an important bearing on the character of this man.

The Court: The character of the man is not in issue, Mr. Nelson; it is his credibility. He may be eccentric, he may do a lot of funny things, but does that reflect on his credibility, or bias, or motive?

[fol. 1029] Mr. Nelson: I think that shows that.

Mr. Cercone: It has nothing to do with this case.

Mr. Lewis: It's objected to as being incompetent, irrelevant and immaterial.

Mr. Nelson: It's simply making it impossible for me to cross examine him. If it was any other witness wouldn't it be possible to ask that question?

The Court: I have allowed you to go farther with this witness than I would with the ordinary witness. The objection to the offer concerning Exhibit "B", referring to an article "Keep Your Eggs" is sustained.

Exception noted.

(End of Side Bar)

Mr. Nelson:

Q. Mr. Musmanno, were you confined to a hospital in 1937 in this County?

Mr. Lewis: This is being objected to as being incompe-
[fol. 1030] tent, irrelevant and immaterial——

A. I was confined to the hospital many times in my life, once when I was injured in service overseas, then when I came back——

Mr. Nelson: I object to his. I think he ought to answer responsively.

The Court: Well, he has started to answer it——

Mr. Nelson: That's all I want.

The Court: We will permit——

Mr. Nelson:

Q. Well, what were you committed for at the time you were in the hospital in 1937?

A. I had trouble with my throat.

Q. With my throat?

A. I had been making speeches against Communists and Bolsheviks about overthrowing this Government by force and violence and strained my vocal chords.

Q. I see.

A. And the doctor ordered me——

Q. It is true, isn't it, Mr. Musmanno, that you suffered from a nervous breakdown that time?

A. No, it was strictly a matter of my vocal chords because of the speeches I made against Bolsheviks and Communists

[fol. 1031] and all those attempting to overthrow our Government by force and violence, and particularly the Communists in this part of the country.

Q. I see——

A. It was shortly before you arrived, before I knew you, so you were not included in those speeches I made against you, but it included the scope of what I later found out.

Mr. Nelson: Now, I object to this. If you permit him to——

The Court: The objection is sustained and we will strike it from the record insofar as they are unresponsive.

Mr. Lewis: I object to this line of questioning, if I can get an objection in here——

The Court: You are the District Attorney and if you object we will sustain your objection——

Mr. Nelson: Well, what is the question? Read the question.

Mr. Lewis: I object to this whole line of questions about [fol. 1032] when he was in the hospital and what he had.

The Court: The objection is sustained as to any further questions along that line.

Exception noted.

Mr. Nelson:

Q. Well, did you at that time write a letter to the Judges of this Court, thirteen of them, I believe it was——

Mr. Lewis: I object to that line——

Q. (Continued:) ——whom you condemned, and you called them in your own terms "that Julius and his Brutus" and you had you were "thirteen", didn't you?

Mr. Lewis: I object to that.

Objection sustained.

Exception noted.

Mr. Nelson: Now, your Honor——

The Court: His differences with the Judges here doesn't affect his credibility.

[fol. 1033] Mr. Nelson: I can understand why the Prosecution doesn't want to have this thing brought out; I can understand that fully——

Mr. Lewis: Nogy, Mr. Nelson knows better—he ought to, even though he is a layman—to make a statement like this. He made these things at Side Bar, he was overruled, and now he stands up here——

The Court: He wasn't overruled on that. We——

Mr. Nelson: I understand the matters at Side Bar had to do with the reading of this letter, which I would very much like to read.

The Court: We are sustaining the objection at this time on this point. Exception noted to the defendant.

Mr. Nelson:

Q. Do you know, Mr. Musmanno, that the Communist Manifesto, an exhibit introduced by the Prosecution, could be obtained in the Carnegie Library in Oakland, and its number there is 335M43A2?

A. Yes, and you can obtain books on murder in the Carnegie Library too, but those books of murder do not rec- [fol. 1034] ommend you to commit murder as these books recommend that revolution be committed.

Q. I see. These books recommend that—your contention is that—strike that. Do you know that the book called Dictatorship of the Proletariat which you have introduced here is listed in the Library 3354D56?

A. Well, if you say it is so listed, I assume that it can be located there; but that has nothing to do with the fact that these books are sold for the purpose of urging the readers on to revolution——

Q. Now, Mr.——

A. (Continued:) —whereas at the Library they are there merely for consultation and reference——

The Court: Please be responsive. These are matters of argument, and we will ask the witness to limit his response to the question, please.

Mr. Nelson:

Q. Do you know that the History of the Communist Party Soviet Union is obtainable in the Library under the number 947C73?

A. I don't know of my own personal knowledge, but I

don't exclude the possibility that the book can be seen there for reference purposes.

[fol. 1035] Q. I see——

Mr. Nelson: I have a whole list of these books that I could show the witness, to see whether he recognizes these, but I will let it go at that.

The Court: Well, I would suggest that you review them and if there are any of these exhibits that are publicly displayed at the Library, go through the list and if the witness knows that they are there, maybe he will say so, and if not then you can prove it in your testimony.

Mr. Nelson: All right.

Mr. Nelson:

Q. Do you know whether the Foundations of Leninism, several copies of 1947818, are in the same Library?

A. My answer to any question of that character would be the same, namely, that I do not know of my own personal knowledge whether those books are there or not.

Q. Do you know, Mr. Witness, whether the Manifesto of Karl Marx and Frederick Engels from the same edition, National Publishers, is available in the Duquesne University library?

[fol. 1036] A. I don't know. I am not a graduate of the Duquesne University, unfortunately.

Q. Now, Mr. Musmanno, I show you a copy of a publisher's description of books and pamphlets put out in 1950 by International Publishers, and I ask you whether you have seen these——

(Defendant's Exhibit "C" marked for the purpose of identification.)

A. I don't know whether I have seen this particular pamphlet, but I do know that the International Publishers, which is a Communist publishing house, does publish books, and if this is its prospectus and indicates that it publishes these books, there is no reason for me to refute what appears there between the covers of that purple pamphlet.

Q. Now, as you glanced through you no doubt saw that,

many of the exhibits that are here introduced by the Prosecution are listed here?

A. Well, I didn't go through it with that purpose. I just generally indicated, but the International Publishers publish a large percentage of those books which I did introduce in evidence, because they are a Communist publishing house, and so it would be inevitable that many of the exhibits came from this Communist publishing house. I don't see too many of the items though which I introduced in this particular catalogue. I see "Joseph Stalin", we [fol. 1037] have that. "Communist Manifesto," "Collected Works of V. I. Lenin", we have two volumes of the Collected Works in evidence; "Twilight of World Capitalism," which someone has checked with a red mark very appropriately; "Socialism Utopian and Scientific," we introduced that in evidence; "Selected Writings of Joseph Stalin," some of those are in evidence; "October Revolution," that's in evidence; "History of the Communist Party of the Soviet Union," that's in evidence. Well, and so on.

Q. To the best of your knowledge, the publishing house you called a Communist publishing house, International Publishers, has been in existence for at least twenty years?

A. Yes, and is on the proscribed list of the Attorney General's office as a Communist Front Organization.

Q. And the publications that this publishing house put out have been circulated openly through the mail and through the libraries, through the universities, and anyone who wanted to could have bought them—right?

A. Yes, and the president of that publishing house is now under indictment in the Southern District Court of the United States for publishing those books——

Mr. Nelson: I object to those remarks, your Honor. This was not the question I was asking. He brought in this remark and I move it be stricken, and furthermore I move [fol. 1038] for a mistrial on the basis of this motion.

The Court: The motion to strike will be granted and the jury instructed to disregard the unresponsive part of the answer. Your motion for the withdrawal of a juror is refused.

Exception noted.

Mr. Nelson:

Q. It is true, is it not, Mr. Musmanno, that these type of books, these Marxist books that are on trial here, that you brought on trial here and you propose to burn them

A. No, I don't propose to burn them.

Q. —like you burned books in Nazi Germany, are available in all Democratic countries where we have a Democratic system of government?

The Witness: If the Court please, he says that I propose to burn them. Now, is that a statement of his or is it a question? How am I going to respond to an utterly unresponsible declaration of that character?

The Court: Don't respond. Let the District Attorney [fol. 1039] object to the question and I'll rule on it.

Mr. Nelson: I'll reframe the question.

Mr. Nelson:

Q. It is true, is it not, that these type of books were illegal and were burnt under the Mussolini-Fascist regime?

Mr. Lewis: I object to that——.

A. I am not familiar with that.

Mr. Nelson:

Q. You are not familiar?

A. No.

Q. Would you say to the best of your recollection they were not burnt under the Mussolini regime?

Mr. Lewis: I object to that.

The Court: The objection is sustained. He has answered the question. He doesn't know.

Exception noted.

Recess.

[fol. 1040] Thursday, January 3, 1952.

Afternoon session.

(After recess.)

Michael A. Musmanno, resumed the stand, and testified as follows:

Mr. Nelson: Because I haven't got the transcript, your Honor, of Mr. Musmanno's testimony, I can only go into a limited examination of the questions that he testified to here. So, in the meantime I want to round out some of these questions not yet brought out clearly enough.

Mr. Nelson:

Q. I still don't have the answer to the question, and I want you to answer yes or no without a speech.

Mr. Lewis: I object to that.

The Court: We will sustain the objection to the form of the question.

Mr. Nelson: Will the Court hold him to the answer, if I put the question.

The Court: You put a short question and we will hold [fol. 1041] the witness to an answer.

Mr. Nelson:

Q. Do you know who assigned a judge to this case? Answer yes or no.

Mr. Lewis: That is objected to as repetitious.

The Court: Objection overruled.

Q. When I say "who" I mean an individual. I don't know what individual—I believe I am entitled to know. So, who was the individual who assigned a judge to this case?

A. I have told you the manner in which cases are assigned, and I stand on that answer; that has been explained fully and completely.

Q. Is it your reason for your refusal to make this thing clear, at least clear enough to me, and I think I am entitled to an answer and the jury is entitled to an answer—is your refusal to answer this question the fact that you had something to do with it?

Mr. Lewis: That is objected to.

A. I do not refuse to answer your question. I have told you that Judge Montgomery, who presiding in this case, was in Court room No. 1 and he took over the panel from which your jury was to be chosen, and he then became the judge in this case by reason of the fact that he was presiding in Court room No. 1; that is how this case was as-
[fol. 1042] signed to Judge Montgomery, which we have explained to you several times.

Q. Otherwise, you would have had to be the trial judge in this case?

A. How could I be the trial judge and a witness? Even with all of your very obtuseness, you certainly——

Q. You manage to do both pretty well, Mr. Musmanno.

Mr. Lewis: That is objected to.

A. You manage to make yourself more and more ridiculous by questions of that character.

Q. That is all right, I am not a Supreme Court judge.

A. Thank the heavens that the only place you will be a Supreme Court Justice will be in Soviet Russia——.

Q. I hate to think what is going to happen to the Supreme Court when you go on it.

The Witness: Now, if the Court please, I am here as an American citizen, and under subpoena, and I ask for protection——

Mr. Nelson: Your Honor——

The Witness: I ask that the statement——

Mr. Nelson: This witness is taking advantage of the Court——

[fol. 1043] The Witness: I ask to make a statement, if the Court please.

The Court: I will ask you both to be silent for a second.

Mr. Nelson: I beg your pardon, I am sorry.

The Witness: The defendant——

The Court: I can't at times inject myself into these discussions between the defendant and the witness to afford protection to either. If you will give me the opportunity to do so, I will do my best to protect you both in your feelings, in your rights, as I have expressed to you before. I have told you that, from the inception here, the important

thing, insofar as I am concerned here, is first, to preserve decorum in this Court room. Secondly, to see that we proceed according to legal procedure. Now, if you will cooperate with me—direct your remarks to me, remarks that are not questions and answers—I will do the best I can. I would ask the cooperation of both. Now, you want protection, Judge Musmanno on, I know what your consider [fol. 1044] unfair questions being put to you, and remarks that are addressed to you that are not in the form of cross-examination for questions, and I will be very happy to do what I can to protect you in your rights as a citizen, and your rights as a witness. And likewise the defendant is looking to me for protection too, and your answers are sometime what we might consider argumentative and not responsive. Now, if you will just give me the slightest chance, I will be glad to accommodate both. Now, you are asking for the privilege at this time of making a statement to me, and asking for protection from something, and I will be glad to hear from you, Judge Musmanno, at this time.

The Witness: The defendant——

Mr. Nelson: May I make an objection, your Honor, to this? There is no question pending. He has gotten into an argument with me. He should have been stopped when he went off on an attack upon me.

The Court: Likewise you——

Mr. Nelson: The only thing I could do, since you couldn't [fol. 1045] stop him, I had to rebut him the best I could under the circumstances.

The Court: Well, I'll accept your reason for engaging in a discussion with Judge Musmanno here. I don't agree with you that I had any opportunity of stopping either one of you. At times I just sit back here and let you argue it out among yourselves. The attorney here for the Commonwealth tries to offer an objection and he can't be heard, and I can't be heard. So, there is nothing much I can do except adjourn Court and recess here until the situation subsides. Now, you just make it impossible to carry on here at times the way we should carry on. I think you are both intelligent here and you should realize the problem that confronts us.

Mr. Nelson: Well, your Honor——

The Court: Now Judge Musmanno, I am affording you the opportunity at this time, and I would ask you Mr. Nelson not to interrupt further until I hear from Judge Musmanno.

Mr. Nelson: All right.

[fol. 1046] The Witness: The defendant made a very derogatory remark about my position, which has nothing to do with my being here as an American citizen and as a witness in this case. The statement which he made, and the disparaging manner in which he uttered it, cannot be excused on the ground that he is his own counsel. On the day that he was arrested, August 31, 1950——

Mr. Nelson: Now, I object.

The Witness: He appeared in Court with two attorneys——

The Court: Judge Musmanno, please. Remarks concerning any of the facts of the case here, or concerning his presence or absence of counsel, I do not think have any bearing here. If you are asking me for protection from disparaging remarks, I'll admonish the defendant to desist from any further conduct of that nature.

The Witness: Well, I would ask that he apologize for the derogatory comment he made about my position, which had nothing to do with this case.

[fol. 1047] Mr. Nelson: Apologize to you?

The Court: No, just a moment. Any apology necessary, I think, should be directed to the Court.

Mr. Nelson: I think you are the one that should apologize to me for causing me all these difficulties.

The Court: Gentlemen, I have been very patient Mr. Nelson, and I have hesitated to exercise the prerogatives of the Court, but persistent interruptions causes my patience to end. The interruption to such an extent——

Mr. Nelson: May I speak to you?

The Court: No, not at this time.

Mr. Nelson: May I ask you a question?

The Court: No, not at this time. When I am through discussing the matter with the witness, I will engage in conversation with you.

Mr. Nelson: All right.

[fol. 1048] The Court: Now, I can't, and I won't, ask

anyone to apologize, Judge Musmanno, under the circumstances present here. I will ask the defendant to desist from engaging in conversation, arguments, and debates with you, or any other witness, and I would ask you at the same time to cooperate with me, to be responsive and desist from engaging in any arguments or debates with him.

The Witness: I am ready to answer all questions allowed by the Court, but I do ask not to be characterized by the defendant.

The Court: You are right in that respect, and I shall demand of the interrogator, the respect that is due of any witness, and the respect that is due the Court, and not to engage in such things which are entirely out of place. Now, do you want to say something, Mr. Nelson?

Mr. Nelson: Your Honor, what can I do here? I am confronted with three judges here, that know the law; and your Honor knows perfectly well what you could do when the witness, who ought to know better, runs off—

[fol. 1049] The Court: I know what I can do with the witness and I know what I can do to the defendant, too.

Mr. Nelson: That is all right; that is what you said here. You threatened me several times but you have not threatened him. I believe he knows more about the law and, therefore, should be held to—if there is anything such as justice here—he should be held to.

The Court: I think you both are well acquainted with the fundamentals of our jury system, and the respect our Court is entitled to. So, I can't distinguish in that manner that you are asking me to distinguish. Let us not discuss it further.

Mr. Nelson: Well, will the Court hold him from attacking me?

The Court: I have admonished both of you to refrain from attack on one another; to refrain from arguments between one another; to refrain from any insinuations or disparaging questions or answers directed at one another, [fol. 1050] and if you will cooperate in that respect, we shouldn't have any further trouble, and we should proceed in an orderly fashion and terminate this case without any unnecessary delay, affording you all opportunity to cross-examine, and affording the District Attorney ample oppor-

tunity to submit evidence here in support of the indictment.

Mr. Nelson:

Q. I handed you this pamphlet a little while ago, which is marked as Exhibit C. You made a statement, did you not, that these books, or rather the International Publishers is on the Attorney General's list. I just don't now know how you characterized that list?

A. The prescribed list, the list of the Committee—

Q. Is that what you testified to?

A. That is right.

Q. It is true, is it not Mr. Musmanno, that the Attorney General—the courts have ruled that the Attorney General had no right, in our democratic system, to make any such prescribed list, or lists of books or organizations, as he has done; isn't that a fact?

A. It is not a fact. You are attempting to interpret a Supreme Court decision and you are interpreting it incorrectly.

Q. Is it your contention then, that the courts have not ruled—is it your answer that the courts have not ruled on [fol. 1051] this question against the Attorney General?

A. The Supreme Court ruled in one particular case, which had nothing to do with the International Publishers, which is a Communist organization.

Q. Well it had to do with a list, did it not, that was on the so-called prescribed list?

A. The International Publishers is not a member of that list. It is a bona fide organization taking orders directly from Moscow.

Mr. Nelson: Well, your Honor, I move to strike this. It is an opinion of the witness. Again he is running off with his accusations when he knows he is wrong.

The Court: Well, you asked the question Mr. Nelson, and you received the answer, so I am not going to strike it.

Mr. Nelson: Well, I wish your Honor would have the question read. See what the question was. He was unresponsive.

The Court: Read the question.

Mr. Nelson: Pardon?

The Court: Read the question.

(Question read.)

[fol. 1052] The Court: Well, you are getting into the field of law and that is not what you are cross-examining on. Cross-examine on the facts and the Court will rule.

Mr. Nelson: The man made a prejudicial remark, your Honor.

The Court: You asked him about the Supreme Court decision, whether it was legal or illegal for the Attorney General to have compiled such a list, and it was answered. So, you will have to be bound by the answer that you elicited, even though it was probably an illegal question, objectionable, and the answer is not within the scope of our inquiry here, but it has been asked and answered, so we will do nothing about it. Proceed.

Mr. Nelson:

Q. Did you, Mr. Musmanno, write a book called "Listen to the River"?

A. I did.

Q. And that is quite a recent book, I mean within the last four years?

A. No.

Q. Five years?

[fol. 1053] A. Yes, that is more like it.

Q. That is a novel, is it not?

A. It is.

Q. And the main protagonist in the novel is yourself, right?

A. No, my father.

Mr. Lewis: That is objected to.

The Court: Objection overruled.

Mr. Nelson:

Q. One of the characters in the book is yourself?

Mr. Lewis: That is objected to.

A. It is a story of my father, and his family, and I naturally am a member of his family, so I am in the book.

Mr. Lewis: Let us have an offer.

Mr. Nelson: I will finish this briefly.

The Court: An offer is called for to ask what you seek to develop by this questioning.

(At side bar.)

Mr. Nelson: I want to show, your Honor, just one more bit of evidence that will prove my contention that this man is politically so serious as to have himself advanced [fol. 1054] as a candidate for the Presidency of the United States. He can deny it if it is not so.

Mr. Cercone: What has that to do with this case?

The Court: He is trying to show motive for bringing this prosecution, and he is attempting to affect his interest and credibility.

Mr. Nelson: He wants to use the Communist issue in his campaign, and I believe it has a bearing on this case against me, your Honor.

The Court: Do you have excerpts from a book that you want to direct his attention to?

Mr. Nelson: I will ask if he knows.

Mr. Cercone: What is the quotation?

The Court: Do you have the book with you?

Mr. Nelson: I don't have it with me.

Mr. Lewis: I think the Court should see the book before there is any attempt made to offer it.

Mr. Nelson: I just have one or two questions on it, your [fol. 1055] Honor, if you will permit me to ask them.

Mr. Cercone: We say that this question would prejudice the witness in the eyes of the jury.

Mr. Nelson: I am asking whether it is a fact or not.

The Court: What is the question you want to put?

Mr. Nelson: I want to put the question to him, "Is it true or is it not that in that book you have advanced the idea that you are to be a candidate for the President of the United States."

Mr. Cercone: That is unfair and it is objected to. The book ought to be here.

Mr. Nelson: I can produce the book.

The Court: You better produce the book and we can

see the exact statement and we will then rule. At this time we sustain the objection.

(End side bar.)

[fol. 1056] Mr. Nelson:

Q. Mr. Musmanno, I believe you testified here yesterday that you introduced a Bill, to outlaw the Communist Party, in the Legislature in 1929?

Mr. Lewis: That is objected to.

A. Right.

The Court: Objection sustained. We have been over that, Mr. Nelson.

Mr. Nelson: Well, this is a different question, your Honor. The only way I can lead up to it is ask some preliminary questions. All right, I will try it differently. I am hampered, your Honor, by these narrow bound rulings.

The Court: We have granted you all the leeway we can. We are not going to review matters we have discussed here yesterday or the day before.

Mr. Nelson: This matter has not been discussed, your Honor.

The Court: The matter of presenting the Bill to the Legislature has been viewed, reviewed and we are not going [fol. 1057] to review it the third time.

Mr. Nelson:

Q. Do you know Mr. Musmanno, or don't you know that the—let us put it this way. When was the present Sedition Act passed under which I am being tried here?

A. It was first passed in 1919.

Q. Do you know, or don't you know that the Bill was opposed by the American Federation of Labor at that time?

Mr. Lewis: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Nelson: Well, your Honor, can I ask him under what circumstances the Bill was passed, to show how this witness takes advantage of times like those and introduces bills?

The Court: The objection is sustained. The Bill is on

the Statute books and the Act is here. The reason the Legislature has, or the motive it has, or the objections to it will not be discussed in this trial.

Mr. Nelson: All right, your Honor.

The Court: It is the law of the State and we will observe it.

[fol. 1058] Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the United Mine Workers opposed that Bill?

Mr. Lewis: That is objected to.

The Court: Objection sustained. That is the same question. We will not permit you to ask questions concerning the passage of the Act.

Mr. Nelson: Well, your Honor, I would have to show under what circumstances these kind of Bills are passed and how they are used against Labor.

Mr. Lewis: That has nothing to do with it.

Mr. Nelson: That is what Sam Gompers said about the Bill.

The Court: The objection is sustained. We will have no further discussion about it.

Mr. Nelson:

Q. Now, Mr. Musmanno, in your testimony you made constant references to the literature that you introduced here, and to the fact that in this literature there's always references to Wall Street, in various ways.

[fol. 1059] A. I didn't state that, but it is true. I did read it. That statement does appear in many of the books. I would not know that extemporaneously——

Q. I want to telescope these things, make it brief, and see whether we can agree that your contention is that there are many references to Wall Street in this literature?

A. There are. You say my contention, it isn't a contention——

Q. Your testimony, let us put it that way?

A. In many of these publications the phrase, "Wall Street" appears.

Q. And it is true, isn't it Mr. Musmanno, that that is

quite a common term used by people, newspaper men, and economists and professors in colleges and so forth, they speak of Wall Street and it has already become an accepted and traditional word in our vocabulary.

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. In the current literature Wall Street is frequently used as a synonym of a financial center of a certain part of our Country. In the Communist literature Wall Street is used as a synonym for the United States in a very improper manner. The Communist literature attacks the United States Government violently, sardonically, and in caricature and in an attempt to avoid the seditious conclusion which might come from such an attack, uses the words Wall [fol. 1060] Street. So, that very often in the literature, Wall Street is meant to be the United States of America.

Mr. Nelson: That is not responsive.

Mr. Lewis: That is very responsive.

The Court: You asked the question what it meant, in that literature, and you received an answer, Mr. Nelson.

Mr. Nelson: All right.

The Court: I was going to suggest if you want to point out to the witness any of the segments of the books, what it meant, you are privileged to do so.

Mr. Nelson: I will do that, your Honor, when I get the transcript, which I do not have yet, and I will compare the notes.

The Court: Very well. I just wanted to advise you of your rights to do that.

Mr. Nelson: All right, thank you, your Honor.

Mr. Nelson:

Q. Are you familiar, Mr. Musmanno, with the expression "economic royalists"?

A. Yes indeed.

[fol. 1061] Q. And you recall, or do you not, that it was President Roosevelt, I believe, who used that in one of his addresses to the United States Congress.

Mr. Lewis: That is objected to as not proper cross-examination.

The Court: Objection overruled.

A. I do not know that he used it in an address to Congress, but I do know that he made use of the phrase.

Q. What did he mean by that in your opinion?

Mr. Lewis: That is objected to as calling for an opinion.

The Court: If you want an opinion, you are liable not to get the one you are seeking, Mr. Nelson.

Mr. Nelson: I know what I am up against here, I have a Supreme Court Justice here.

The Court: We are not trying the case on opinions, but on facts.

Mr. Nelson:

Q. What did he mean by that?

A. The President referred to the monopolists who had [fol. 1062] undue control over the economies of the nation.

Q. And you wouldn't say, would you, that he also referred to the Republican administration that he swept out of office, as being essentially and mostly dominated by the economic royalists?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I don't know if you could characterize an entire Party with the phrase "economic royalists," because the word "royalist", personifies some thing. Therefore, it must be an individual, and you couldn't personify a Party with a word, or phrase of that kind.

Q. But the phrase was used, was it not, by Mr. Roosevelt and those who used that, after they coined that phrase, after him, to describe a monopoly in this Country that owns the wealth of this nation, the basic wealth?

A. No, I don't think he did.

Q. You don't think so?

A. No.

Q. So, who did he mean?

A. As I said before, he referred to certain monopolists——

Q. All right.

A. —he referred to certain monopolists who had undue

control of certain interests in the nation, which is far from universalizing as you are attempting to do.

[fol. 1063] Q. Didn't he use that expression at that time, to show the people of the Country that it was necessary to sweep the money changers out of the temples; didn't he say that?

A. I don't know whether he used that phrase or not. I am very familiar with his speeches, but I don't know whether he used that particular phrase or not. He may have. He also spoke about sweeping the Communists out of the United States, also.

Mr. Nelson: I move to strike that.

The Court: Motion granted.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that when Roosevelt became President of the United States, that Hoover had around him in his Cabinet, people like Andy Mellon, and other economic royalists; isn't that true?

Mr. Lewis: I object to this. The Court room is not to be used as a public forum now.

The Court: Objection is sustained. I have permitted questions concerning terms asked here on the basis that probably they will be pursued from excerpts from these books; is that the purpose?

Mr. Nelson: I want to lay a basis for that.

[fol. 1064] The Court: That is what I thought, but as far as bringing individuals into this, associated with Government officers in the past, I can't see that that is relevant, Mr. Nelson. I will sustain the objection when it comes down to a point of personalities.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that when Roosevelt used the term "economic royalists" he meant the people that owned the basic industries of the nation; the large newspapers; the means of spreading propaganda, that sometimes goes off, or is passed off as information; radios, and so forth that he contended that they had too much power and that they should be swept out of office?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I gave you my definition of "economic royalists" as I conceived it to be in the manner in which our late lamented President used it. He did not universalize it as you are attempting to universalize it.

Mr. Nelson: I did not hear the last part of the answer.

(Answer read.)

[fol. 1065] The Court: Was it applied to any particular industry or enterprise?

Mr. Nelson: We will get to that in a minute.

The Court: All right, I will withdraw my question.

Mr. Nelson:

Q. It is a fact, is it not—or let me put it this way, Mr. Musmanno. You are an educated man and you claimed you made tremendous study of economic political subjects, such as history, and so forth, you certainly ought to be familiar with this phrase. Do you know, or don't you recall, that Woodrow Wilson stated that the combined monopolists and bankers of this nation are the masters of our government?

Mr. Lewis: That is objected to, what Woodrow Wilson stated.

Mr. Nelson: Wait a minute now.

The Court: We have overruled the objection. You asked the witness whether he was acquainted with a statement made by Woodrow Wilson.

Mr. Nelson: That is right.

The Witness: Will you read the question again?

[fol. 1066] (Question read.)

A. I do not exclude the possibility. I have no independent recollection of that particular sentence.

Q. So then there are men in our nation who, and non-Communists may I add, who referred to the situation at times that those monopolists that are referred to here in this literature as bankers of Wall Street, have entirely too much sway in the execution of our Government.

A. Yes, that is true. Statements have been made of that character, but they have not been followed up with urging people to overthrow the Government by force and violence, which Communists do and which this literature proclaims.

Mr. Nelson: I object to that as a conclusion. It is up to the jury to find out if that is true or not. I move to strike this.

The Court: All right. The last part of the answer will be stricken.

Mr. Nelson: Well, your Honor, why does he do it? You made an appeal to him. I'm trying to adhere to your ruling as best I can, and why shouldn't he do it?

The Court: He should, and I'll ask him again to try to [fol. 1067] refrain from elaboration and be direct in his response.

Mr. Lewis: Some of these questions, it seems to me, if the Court please, have to be elaborated on; they are not just yes or no questions.

The Court: Well, some of them need to be, but on the other hand, some of them are argumentative. It is your duty, as District Attorney, rather than the witness to pursue them by way or argument.

Mr. Lewis: The questions themselves are argument.

The Court: No, the questions themselves are forming a foundation for an explanation for other excerpts from the books, as I understand it.

Mr. Nelson: That is right, your Honor. May we have another break, your Honor?

The Court: Could we not continue for ten minutes longer?

Mr. Nelson: I wish you would recess now. My leg is sore and I am getting tired.

[fol. 1068] The Court: You may sit.

Mr. Nelson: I can't do it that way.

The Court: Well, we will consent to your request and adjourn for ten minutes.

(Recess.)

After Recess

MICHAEL A. MUSMANNO, resumed the stand and testified as follows:

Mr. Nelson:

Q. So then Mr. Musmanno, your answer would be that you are familiar, and it is your belief that Woodrow Wilson would have made such a statement as we quoted awhile ago?

A. Yes. I said that I am not familiar with that statement but I do not exclude the possibility that he may have made it.

Q. And there were other historians and economists of great reputation who have made the same findings in their study of the economic picture of the United States?

A. I don't say findings, but I think the phrases of the same import have been used.

Q. Well let me put it this way. Would you agree that the phrase "economic royalists" is a proper expression, that there are tremendous monopolies in the United States?

A. I know that President Roosevelt used that phrase, and [fol. 1069] he used it in referring to certain monopolists who had an undue control of certain interests in the nation.

Q. So that there are other people besides Communists, who have written different literature, who have come to the conclusion that we have tremendous monopolies here who own a tremendous amount of the wealth of this nation, and they are generally now referred to as "Wall Street" isn't that right?

A. The question is very complicated and rather obscure.

Q. I am sorry. Will you read the question?

(Question read.)

A. Well, the statement——

Q. I will reframe the question. It is agreed, is it not, that the monopolists that this literature refers to, are also referred to as Wall Street, is it not?

A. But not in the same sense.

Q. Is it your testimony, Mr. Musmanno, that these references to the monopolies that exist in the United States in this literature is correct or incorrect?

A. It is incorrect, because when they refer to Wall Street, they refer to the United States Government, and they use

language of violence against the United States Government in an attempt to camouflage that attack upon our very Government by using that term monopoly.

Mr. Nelson: That is objected to.

The Court: The objection is overruled.

[fol. 1070] Mr. Nelson:

Q. Under the heading of monoplies, will you——

The Court: Maybe I misunderstood the question. Are you asking the witness whether the use of the words Wall Street and monopoly are synonymous?

Mr. Nelson: That is right.

The Court: By whom. By the writers in this literature, or by the people whom you have mentioned?

Mr. Nelson: It is commonly believed, that is one and the same thing.

Mr. Nelson:

Q. Isn't that a commonly accepted idea by the people who use the term?

A. The answer is no, a big no.

The Court: May we have a clarification of the previous question.

Mr. Nelson:

Q. Do you know Mr. Musmanno, or don't you know, that there are 500,000 corporations in the United States engaged in the manufacturing business, but 200 of those corporations [fol. 1071] own 55% of the wealth.

Mr. Lewis: That is objected to.

The Court: Well, I think we better have an understanding here, gentlemen, how far it is relevant.

Mr. Lewis: May we have an offer at side bar?

The Court: Very well.

(At side bar.)

Mr. Nelson: Because Mr. Musmanno testified that in this Communist literature, when one speaks of monopolies and speaks of Wall Street they give the name of ipso facto, by

that, the American Nation, the Country, its people. Now, my condition is this, and I want to show through facts that there were other people who referred to the Country, that is, to the Government, at times as being controlled by monopolists and that it will require revolution to change it. It required a struggle on the part of the people through years to take it.

Mr. Lewis: What has that got to do with this?

[fol. 1072] The Court: Is there anything in the books on that?

Mr. Nelson: Yes, plenty.

Mr. Lewis: Then refer to it in the book.

Mr. Nelson: I told you that I am not well. I can't prepare that, or do it in any other way.

The Court: I told you that I was agreeable that you secure from the witness his understanding of certain terms, but when you get into detailed facts, such as this, we cannot permit it.

Mr. Nelson: This would only take about 15 minutes.

The Court: Well then specifically refer to the books.

Mr. Nelson: Because I have not been well I have not had sufficient time to mark the pages and go through it.

The Court: I would ask you to refrain from asking these questions until you are properly prepared to ask certain [fol. 1073] meanings by portions marked in specific paragraphs in the book.

Mr. Nelson: I object to your ruling, if the Court please. You are imposing a hardship on me.

The Court: I am not limiting you except to this extent, that any particular part of the book not read by the witness, you certainly have a right to inquire into now, but you cannot do so without showing the specific part to the witness.

Mr. Nelson: It has to do with monopolists and economists. I contend that I have a right to disagree with the opinion of this witness on monopolists and economists.

The Court: Certainly, you have a right to disagree with his opinion.

Mr. Nelson: Of course, a lawyer might do it differently.

The Court: What I am asking you to do is point out in books, which are alleged to be seditious, these points you raise. Now, if we open up the door to you to just talk gen-

erally about the entire economy, or political matter, social [fol. 1074] matter, education, or other matters, there would be no end to it. If you will proceed on that basis and use those books then we will permit you to do so. If you are referring to exhibits which have already been offered in evidence, you have a right to point out the specific passages. I will allow you to do that.

Mr. Nelson: I will go into some other questions right now.

(End side bar.)

Mr. Nelson:

Q. It is true then, is it not Mr. Musmanno, that people like Roosevelt and others spoke of the undue amount of power that the monoplists in this Country have at various times on the Legislative bodies, and on the economic lives of the Country as a whole?

A. Yes, there have been references of that character, but not in the same way Communists use those references.

Q. I am not asking you that. All you have to do is answer yes or no. It is true, is it not, that it was Roosevelt, who during the great depression felt that the big monopolists of this Country had brought the nation to a position where there were 15 million jobless, while a handful of monopolists [fol. 1075] wallowed in wealth?

Mr. Lewis: That is objected to.

The Court: The objection is sustained. We will rule out any reference to statistics unless there is a particular reference.

Mr. Nelson: I didn't say that, your Honor.

The Court: Well, you did say 15 million jobless.

Mr. Nelson: I understood that you stated I couldn't go into monopolies.

The Court: I told you you could inquire of the witness anything concerning terms which may be pursued later in reference to these books, but not to get into any specific discussion as to number of corporations, purposes, just as you have done here, the number of unemployed, or anything of that general nature without reference to the books which are in evidence.

[fol. 1076] Mr. Nelson: Well, your Honor, you are blocking

my line of examination, even on the point which I thought you permitted me at side bar.

The Court: I will let you talk about economic royalists, Wall Street, or what those terms mean, or any other terms which may be referred to in those books.

Mr. Nelson: All right, your Honor.

Mr. Nelson:

Q. In these books, it is true is it not Mr. Musmanno, that references to the economic royalists, when there are such references made, are applying to the large corporations, like the Morgan bank, the Mellon bank and the Rockefeller bank, and so forth?

A. There are references in these books to phrases such as you have in mind, and I can't at this moment individualize the particular phrase "economic royalists," in the books, but there are many references to Wall Street, and these phrases are used as a camouflage for an attack on the Government, the governmental policy——

Mr. Nelson: I move to strike this witness' statements.

The Court: It is an opinion you asked for, and that is the [fol. 1077] point I am making. If you want to point out certain phrases in these books to the witness, which would counteract the part which he has read, you have the full privilege to do so, but when you ask for his opinion you are bound by his answer.

Mr. Nelson: I told the Court that the reason I couldn't properly prepare to cross-examine on the books was that only this morning I got the transcript.

The Court: We understand that.

Mr. Nelson: When Mr. Musmanno testified, I had no chance to put down the references. I put down the exhibits, but I had no chance to put down the references. It is very difficult for me at this time to confront him with the quotations, or distortions, the way he misquoted the book.

The Witness: I object to the statement that I in any way misquoted anything in the book.

Mr. Nelson: I said distorted.

The Court: The only thing that was submitted to the [fol. 1078] jury was the reading of the excerpts from those books. Those exhibits are all marked from 1 to 100 and

some, and they were marked "the excerpts were marked to which you objected, asking that clean copies be presented. Now, those marked copies are here, and you, according to the testimony of the witness, had something to do with the books before they were procured by him, and you should have some acquaintance with them in order to enable you to proceed to cross-examine on the effect of his testimony. I have a list of exhibits here, made by my notes, which might be helpful to you.

Mr. Nelson: That is all right. I have a number of the exhibits here with me. I don't have all of them, and I will ask the witness whether he remembers Commonwealth's Exhibit No. 19, called "The Twilight of World Capitalism."

A. Yes, I do remember that.

Q. Do you remember Chapter 3, on page 30?

Mr. Nelson: Do you have a copy there, Mr. Lewis, so you can follow it?

[fol. 1079] Mr. Nelson:

Q. Mr. Musmanno, you quoted from this chapter—I don't have the exact place marked—but do you remember reading the following in Chapter 3, on page 30? "The capitalist United States has at this time reached a national income of 250 billion dollars yearly and it turns out at least two-thirds of the industrial production of the whole capitalist world. Never has any Country even remotely approached such an immense productive capacity and national income. And if capitalism is strong in the United States, the forces of socialism are correspondingly weak. The working class has not yet broken ideologically with capitalism, the workers have not even organized a mass labor party, and the Communist Party still remains but a small organization. Small wonder, then, that the spokesmen of American capitalism fill the air with boastings and shouts that capitalism in this Country has found the secret of permanent growth and prosperity and that socialism can never come in the United States." Do you remember reading that?

A. I did not read it to the jury. I remember reading it.

Q. Do you remember reading the following on page 31? "Besides, in the construction of our social system, American

capitalism has been largely unhampered by the hang-overs from feudalism that have been such a drag on capitalism in other parts of the world. A dynamic factor, too, was that there was in this country for many decades a chronic [fol. 1080] shortage of labor power (because capitalism has literally had to build the continent from the ground up), which fast greatly stimulated American technology and inventive genius in their never-ending quest for labor-saving devices. In addition America has drawn freely on European capital and skilled labor during that time for the building of its industries."

"Few Americans realize to what a large extent, during the past generation, the capitalist economy in this country has fed upon the blood of war. When World War I broke out in the fall of 1914 the United States, then caught in an economic depression, as a result of the war overcame this depression and embarked upon a period of active production and industrial development." You read that, didn't you?

A. I have read it.

Q. You quoted that?

A. No, I did not quote that, but I did read it.

The Court: Just as a matter of suggestion, in the matter of procedure, may I ask this question of the District Attorney, and also of the defendant? All of these books are in evidence and would it not be better for you, in your testimony, to emphasize these points rather than to just get the affirmation from this witness of the existence of these passages in the books?

[fol. 1081] Mr. Nelson: Well, your Honor, I will prepare the right kind of quotations that have references that were mine to these books, by this witness, when I get the transcript. I didn't have a chance to do it, and I didn't know I was going to get to it by this time. You ruled out a number of things that I intended to handle today.

The Court: Well, I understand that. The only point I am making now is to inquire what is to be accomplished by reading these passages to the present witness. He has identified the books and the District Attorney certainly is not going to deny that the passages you refer to are not in the books, and they could be submitted by you in presenting your case in defense. Rather than having this witness

merely say that they are in the books. However, if you want to question this witness concerning the parts, the effect of the parts he has read, by reference to these, I can see some purpose of pursuing it by cross-examination.

Mr. Nelson: My intention was, your Honor, to show the [fol. 1082] jurors here and the Court, that the devil can quote the Scripture too, you know, and he can quote that section that pleases him. I want to show these books mean something in toto; that is, people can read them and they can take out of that what they wish.

The Court: I think we understand the matter of your defense on it. Your defense is that these books are not seditious.

Mr. Nelson: That is right, your Honor.

Mr. Lewis: Apparently Mr. Nelson is trying to put in his defense on cross-examination.

The Court: Well that is what I am directing his attention to. It might be better for him to submit these passages to the jury on defense, rather than by cross-examination of the present witness. The books are all in evidence and the jury has a perfect right to see and read them all, if they see fit to take the time to do so, or to hear each side present those parts of books which they feel will sustain their position.

[fol. 1083] Mr. Nelson: Well, your Honor, I don't know whether the jurors will have time to look through 150 odd exhibits, or not, and some of them run into two or three hundred pages, and they have been presented in a slanted way by the prosecution.

The Court: Well, that is the reason I suggested you do it this way. It might be better for you to present them by way of defense, that is, those parts of the books which you want them to consider from your viewpoint, rather than have the jury rely on the opinion of the witness, or his interpretation of what your part would be.

Mr. Nelson: Well, your Honor, in that case,

The Court: It is a matter for you to decide on. I merely make the suggestion to you on it that the Commonwealth has offered certain passages to demonstrate they are seditions, and possibly by way of defense you should offer certain portions that indicate they are not seditious. That would be more beneficial to you to do it that way.

[fol. 1084] Mr. Nelson: I would have to have the transcript, your Honor, and I don't have it.

The Court: Of course, your time to present evidence yourself is not here. It can be done in the defense testimony, or if you just wish to ask the witness to confirm that those passages are in the book, I will permit you to do that.

Mr. Nelson: Well, your Honor, I have very few copies of the exhibits here, actually only three or four. It is hard for me to carry them and I did not have the exhibits, and therefore I was not able to prepare the examination on this particular thing in such a way as to be able to confront his quotations, or interpretations with my interpretations.

The Court: Well, the only point I am making Mr. Nelson is this, you still have the right to submit any of those quotations, even without the presence of this witness.

Mr. Nelson: It is important to me, it seems that it be done while this witness is on the stand.

[fol. 1085] The Court: All right, if you think that is more beneficial to you, you are privileged to do so.

Mr. Nelson: All right, I hope I will be able to get the transcript by tonight, and if I do I will prepare it for tomorrow. In the meantime I will ask another question about another exhibit.

The Court: All right. You may proceed.

Mr. Nelson:

Q. All right, Mr. Musmanno. You introduced for the Commonwealth, did you not, a pamphlet known as the Manifesto of the Communist Party, or commonly referred to as the Communist Manifesto, written by Friederich Engels and Karl Marx?

A. I did.

Q. It is a fact, is it not Mr. Musmanno, that this pamphlet was prepared by Marx and Engels for the First International Association organized in London in 1847 and '48?

A. That is true.

Q. And Marx and Engels were commissioned by this International Association to write a program of a general character for those who began to see that there was something wrong with capitalism, as they saw it, and wanted to make a change?

A. Through revolution.

[fol. 1086] Q. Well, it is true, isn't it, Mr. Musmanno, that there were countries at that time in which people had no right to vote and had no right to ballot, or they had monarchs ruling the countries, consequently, like the American people who had to resort to revolution to kick out a monarch from here, in this country, in those countries it might have been necessary to resort to force as they saw it, isn't that right?

A. But this was the bloody shirt of world revolution and not national revolution.

Q. Well, Mr. Musmanno, isn't it true that the Manifesto was now in existence for over 103 years, and that in various countries, various Communist Parties applied whatever they read from there in such a way as to apply to the conditions in their own country, and they did not apply universally all over, isn't that a fact?

A. This is an appeal to world revolution; that the workers should rise in revolution against their country—their governments—no matter what type of government might be in power in that particular country; that is what the Communist Manifesto is and that is what makes it so dangerous.

Q. Isn't it a fact that Communists at various stages, in various countries, did not raise the question at all of changing the system immediately to socialism, but have combined with other parties to fight for the immediate demands of the people that confronted them at that particular time?

A. There is no country in which Communism took over that did not result in bloodshed, hardship and misery for [fol. 1087] the people. The Communist Manifesto is an appeal to revolution—not peaceful revolution, but violent revolution—and violent revolution brings in its wake only bloodshed and untold misery and that has been the history of Communism in every country in which it took over, and I can give you the list of those countries.

Q. Isn't it true, Mr. Musmanno, that in the democratic countries, where there is a right to discuss things, and a right to have meetings, and a right to read books, and where there are rights to have elections, like in France and in England at the present time, that the Communists in those countries supported various actions that were bene-

ficial for the people, having nothing to do for the moment with the question of changing the system to socialism.

A. In no country did the Communist Party take over through an election. They never appealed to the electorate. They did it only through stratagem, through assassination, through violence, force, deceit and desperate measures of violence; that is the history of the Communist Party in every part of the world, without exception.

Q. All right. That is your prejudicial remark, Mr. Musmanno, and that does not correspond to the facts as we will show.

A. Well, that is a statement from you, not a question for me to answer. If it were a question I would deny your statement as being correct.

[fol. 1088] Q. Isn't it true, Mr. Musmanno, that this pamphlet dealt, not with one particular country, and therefore could not give a program for every country, but it spoke in general that capitalism eventually had to change?

A. Through revolution.

Q. Wait a minute now. Isn't it true that they contended that there would have to be a change from capitalism to a system where the people would own the industries, which is commonly or generally known as socialism or Peoples' Government where the industries are nationalized?

A. Through revolutions. This book urges the abolition of the family; it urges the abolition of religion; it calls upon the workers of the world to unite in world revolution. If you want me to read that paragraph I will read it to you.

Q. Again on the point that this is a general description of world events, of the world picture, and not a program for a particular country, on page 22, Chapter 2 of the Communist Manifesto, you will find, do you not, the following: "The Communists, therefore, are on the one hand, practically, the most advanced and resolute section of the working class parties of every country, that section which pushes forward all others; on the other hand, theoretically, they have over the great mass of the proletariat the advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement.

[fol. 1089] "The immediate aim of the Communists is the same as that of all the other proletarian parties; Forma-

tion of the proletariat into a class, overthrow of bourgeois supremacy, conquest of political power by the proletariat."

A. Right.

Q. Now, Mr. Musmanno, the reference that we made awhile ago to the term "sweeping out the economic royalties from the temple," or "driving them out of the temple," does not that mean that other people, besides Communists had ideas that the low economic group should not be allowed to rule the country; that they should be swept out and that the common people should have more right to say what should be done with the economy of the country; isn't that true?

A. I will read to you, in answering your question, on page 44. "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow—" and I emphasize the word "forcible"—"only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communnist revolution. The proletarians have nothing to lose but their chains. They have a world to win."

Q. That, Mr. Musmanno means, does it not, that the monopolists who now have everything in their hands, ought to tremble, yes, that the people may one of these days take over those monopolies and use it for themselves?

A. By revolution.

[fol. 1090] Q. That depends Mr. Musmanno, does it not, whether or not in the countries there is certain democratic rights or not, or whether or not you have a fascist dictatorship which sets itself in power, and you can't move them any other way than Mussolini was moved out and Hitler was moved out, isn't that right?

A. You state in your question that under certain conditions you would advocate revolution?

Q. I state that under those conditions, if the fascists and nazis were in power, I would advocate revolution, yes.

A. We have no fascists or nazis in power in the United States and you advocate revolution.

Q. We do not advocate revolution here, Mr. Musmanno. We say that what we want is a social change——

A. Through revolution.

Q. —that the people will take over industries and use them for themselves?

A. Through revolution.

Q. Well, that is your conclusion, Mr. Musmanno.

A. It is not my conclusion. It is in the books. You state it yourself.

Q. That is the way you interpret the books?

A. No, no. Just as the books are read and as you, yourself, stated many times, you are for the revolution.

Q. That is your inference, Mr. Musmanno, and my contention is, and that has been proven in history that the only time Communists resorted to force and violence against a [fol. 1091] group in power is when there was either a czar, a monarch, or a fascist dictator, where the rights of the people were taken away, and not in places where people had a right to vote and elect and discuss issues of election.

A. How about Albania? How about Poland? How about Czechoslovakia? How about Hungary?

Q. Wasn't Mussolini the one, your pal the one who took over Albania? Isn't that right?

A. Mussolini was not my pal. I wish to be saved from such derogatory remarks. I do know that you studied under Joseph Stalin.

The Court: We will ask that the last question, and all the subsequent remarks be stricken from the record and the jury is instructed to disregard them.

A. There is not one country, and I make that remark categorically——

Mr. Nelson:

Q. Are you answering the question?

A. Yes; I am answering the question.

The Court: We have stricken the question and all the remarks. You will put a new question to the witness.

Do you want him to answer what about Albania, in the [fol. 1092] proper terms, Mr. Nelson?

The Witness: Incidentally, Mussolini was dead before the Communists took over Albania, if you want to get your history straight.

Q. Isn't it true that it was Italian troops that went to drive King Zog out of Rumania—I mean out of Albania—isn't that true, away before the World War?

A. But Communism did not come into power in Albania until the postwar——

Q. I raised the question——

A. I am speaking about when the Communists took over Albania and Mussolini was dead at that time.

Q. All right. I am talking about the fact that the Italian troops went into Albania, when it was a small kingdom there, a small republic of Albania, and I believe that was in 1934.

A. That is a matter of history, but we are speaking about when the Communists came into power, and I have stated that not in one instance did the Communists ever come into power in any given country, except through violence, assassination, stratagem, deceit and treachery.

Mr. Nelson: I have to strike that your Honor. That was not a question that I asked *to* him. He was making a speech. There was no question pending and he had no [fol. 1093] right to make those remarks.

A. I'll give you the countries if you want them.

The Court: I think that was in order with your discussion, Mr. Nelson, and you asked him to name a country where such did not exist. You mentioned Albania as a country where there was no violence, and there was a revolution without violence——

Mr. Nelson: Your Honor, I said that it was Mussolini and the fascists who invaded that country, without any provocation whatever, and that was the thing I threw in when he was characterizing my remarks.

The Court: I think the answer is responsive.

Mr. Nelson: All right. We will get back to the matter of books, when I get the transcript, your Honor—I can't do it this way. I have one more question.

The Court: All right. We will proceed until four o'clock.

Mr. Nelson:

[fol. 1094] Q. Would you say, Judge Masmanno, that these books are of such nature, and that a statement of this

kind would be the way you consider these books? "We must keep American whole, safe and unspoiled. We must keep the worker away from Red literature and Red ruses. Bolshevism is knocking at our door." Would you say that that would be your way of formulating a question?

A. I would like to know first from what you are reading.

Q. Well, does that sound like anything you would subscribe from?

Mr. Lewis: We object to that unless he states what he is reading from. He is obviously quoting from some printed material.

The Court: Well, I think to ask whether a witness subscribes to a certain theory himself, is not an appropriate question, Mr. Nelson. I will sustain the objection.

Mr. Nelson: It is a description of his opinion of these books that he introduced as evidence.

The Court: If you want to ask him for an opinion of the books, that is one thing. Do you mean his opinion of the books reflect your idea? Is that what you mean?

[fol. 1095] Mr. Nelson: We will put the question this way.

Mr. Nelson:

Q. "We must keep the worker away from Red literature and Red ruses." Leave it at that.

Mr. Lewis: That is the very thing I object to. The question does not mean anything; it is confusing; it is ambiguous.

The Court: No, I think it can be answered. Judge Mussmanno. Do you subscribe to the theory that the working class of America should be kept away from Red literature?

A. I have asked where he got this quotation and he has not been courteous enough to show it to me. But, I certainly would not speak for the working people as to what they may, or may not read, but I do say that any literature which is circulated among the working class, which would stir up dissention and make a feeling foredisrespect for the government to the point where they would rise up in bloody revolution against the government, is literature that should not be circulated.

Mr. Nelson:

Q. Well, would you reject this idea? "We must keep the workers away from Red literature and Red ruses!"

A. I would keep that literature away from everybody, [fol. 1096] because that literature——

Q. What about this?

A. That is the literature that I read, which I got in your headquarters and which urges revolution.

Q. Yes.

A. When you say "Red literature," there I don't know what literature you are referring to. That becomes a matter of interpretation. This, I know, to be seditious literature.

Q. Do you call this "Red literature"?

A. "Red" is a colloquialism in that sense. I refer to it as seditious literature.

Q. I see.

A. We are speaking precisely here in law and we can't refer to colloquialism.

Q. You don't want to answer, or rather associate yourself with his idea; or you don't want to repudiate it?

A. I want first to know what it is you are reading. I want to see the entire context. I want to know where you got it and I shall then give you an answer.

Q. I will give you the answer later on, if you will testify whether you agree with it or not.

Mr. Lewis: I object. I think the question should define "Red literature".

The Court: Oh well, there is no such thing as "Red [fol. 1097] literature." Some may be seditious, some may not be. He has answered the question. We are concerned with this literature here. Limit your question to this literature and you will have his answer.

Mr. Nelson: All right, your Honor, we will come back to this later if he does not want to answer.

The Court: All right.

Mr. Nelson: I can't pursue this any further until tomorrow.

Mr. Lewis: Now, there has been a statement here that the witness does not want to answer. There was an objection made and he does not have to answer.

The Court: The question has been answered as limited by the Court.

Mr. Nelson: All right.

The Court: All right. Recess until tomorrow morning at 9:30 o'clock.

[fol. 1098] Friday, January 4, 1952. Morning Session.

Met pursuant to adjournment and the taking of testimony continues:

(At Side Bar):

The Court: The defendant's motion for a list of Commonwealth's witnesses is refused. The only statute on this that I found is a Federal statute requiring that the names of witnesses be given in cases of treason.

Exception noted.

Mr. Nelson: Your Honor, what about that list of materials that the Commonwealth seized that I asked for. You said you are going to make a ruling on the list and give it some thought.

The Court: Well, it wasn't a case of giving it any thought. I requested the Commonwealth to prepare a list of some sort, or tally, or catalogue of the exhibits that have been offered.

Mr. Lewis: We will have to take it out of the testi-[fol. 1099] mony.

The Court: Is that what you meant?

Mr. Nelson: Well, I won't have too much difficulty with it. I have a copy of the transcript, I got it this morning, but what I want is the other stuff that was seized which I may have to look over for my defense, and I would like to ask the Court——

The Court: You mean the books or anything else that was——

Mr. Nelson: Yes, books, pamphlets, literature, letters, what-not, that have not been introduced by the Prosecution, but they may be very important for my defense. I would like at least to see a list of them, and if I get it I would ask the Court to give me permission to look at them and use them.

The Court: There are a lot of things that apparently have not been introduced.

Mr. Lewis: Don't you have an inventory? We gave you [fol. 1100] one the last time. I will see if I have a copy of that.

The Court: Well, give him a copy of it.

Mr. Lewis: We will look that up.

Mr. Nelson: I again renew my motion for mistrial on the grounds of this newspaper (indicating), the Sun-Tele, a large paragraph about Judge Musmanno and the Presiding Judge of the Supreme Court who officiated at the ceremonies yesterday. This was in all the newspapers, it gave this witness publicity, and makes it—puts me in a position of not being able to conduct a fair trial because the jurors are prejudiced by this kind of publicity.

The Court: The motion to withdraw a juror for that reason is refused.

Exception noted.

(End of Side Bar.)

[fol. 1101] Michael A. Musmanno, recalled, resumed his testimony as follows:

Cross-examination (continued).

Mr. Nelson:

Q. Mr. Musmanno, I believe you testified when you were at the Communist headquarters on three dates, 18th, 19th and 31st, that you saw nothing there except literature about Russia, and nothing about the United States?

A. No, I didn't say that. I saw much literature about the United States, but all criticizing the United States, and the literature of Russia glorifying and praising Russia. I found not one item there in criticism of Russia, Russian history, Russian government, although there were many books and pamphlets and leaflets treating of Russian life.

Q. And I think your precise statement was you saw no books dealing with American history whatever?

A. There was no volume on American history. There were, of course, many references to America, as I have said,

all very critical of America, treating America in sarcastic language, condemning it completely, but there was no book on history as we understand a history book.

Q. Do you recall or don't you recall seeing a book there called The First American Revolution, by Harding?

A. That book was brought in by James Dolsen on Sep- [fol. 1102] tember 1st. It was not visible to me in the three hours that I was there in the headquarters.

Q. Well, isn't it true, Mr. Musmanno, that at the previous trial the list of exhibits that were picked up in the headquarters, or rather, the material, books and pamphlets, that were picked up and were listed by Mr. Lewis included a copy of this book I am asking you about?

A. I don't think so. The situation was this: On July 19th I very specifically asked Mr. Dolsen who was in charge of the literature department if he had a book on American history. I said, "I see countless books on Russian history, do you have one on American history?" He says, "No, there's no need for us to have a book on American history." On August 31st, when I spent a longer time there, about three hours or so, I made an examination of the headquarters and found no book on American history. The following day when we had our preliminary hearing in Criminal Court, Mr. Dolsen at the termination of the day's proceedings, or as we were about to terminate, asked the Court through one of the many lawyers that were there representing Steve Nelson and Dolsen and Onda, if he could not go over to the headquarters and get certain books, and he did indicate some of the titles, and we said to him—or someone said to him, someone representing the Commonwealth, that those books could be obtained for him——

Mr. Nelson: Your Honor, I believe that is too far afield. [fol. 1103] The question was whether he saw a book, a particular book, and then I asked the question whether or not it wasn't true it was on the list of exhibits and he could have answered "Yes" or "No". I do not have the list of the request I made to the Court this morning, but if I had the list of those I believe I could show that that particular book was on the list, your Honor.

Mr. Lewis: The question was whether the witness saw it when he went there and he said "No." We will stipulate

that the book was on the list, but when we seized the material it was away after the time that the witness was originally in the headquarters.

The Court: I think that's what the witness was explaining. You will concede, then, that this book "First American Revolution" was included on the inventory of——

Mr. Lewis: It was included on the inventory.

The Court (Continued): —of data that was provided at the previous trial.

[fol. 1104] Mr. Lewis: That's right.

A. But not found on August 31st. It was included on the list because then later Mr. Dolsen brought it in and it then became an exhibit, and then it got on the list because I had an opportunity to look at the books and found that it was not, as we understand it, an American history.

Mr. Nelson: Well, your Honor, I believe this ought to be stricken because of Mr. Lewis' stipulation that it was there. And he could have answered either "Yes" or "No", either he saw it or he didn't.

Mr. Lewis: I didn't stipulate——

The Court: I think the explanation is in order to explain the matter to the jury, that there was a previous catalogue of data supplied to you and that this was on the list of books included there——

A. But not found on August 31st.

The Court (Continued:) The witness has testified that it was not found on August 31st, it was produced by Mr. [fol. 1105] Dolsen on September 1st.

The Witness: That's right.

Mr. Nelson:

Q. Well, in that case, is it not a fact that when Mr. Dolsen went to the headquarters on the day that you speak about, that he was accompanied by an officer of this Court?

A. That is true.

Q. Or, rather, an official, a policeman or a detective?

A. That's right. But the book was not in evidence——

Q. So the inference could not be made that somebody snuck it in later, I mean that couldn't be made?

A. Oh, no, no, no, no, there is no inference like that——

Q. All right.

A. (Continued:) The only inference is that he had it concealed in his desk.

Q. I want to get that straight because you made an elaborate explanation which might have implied that the book wasn't there, but that it was put in there later?

A. No, but I do say, as I said before, that the book was concealed in his desk and not visible to me when I was there on August 31st.

Q. When you say "concealed in his desk" what do you mean? Was it locked under key or something?

A. Well, I made an examination of the headquarters and then cursorily went through the drawers of the desk and [fol. 1106] did not see it, so I say that it was concealed.

Q. All right. Did you at the same time that you were there on those three dates, did you see a book called "Negro Slave Revolts in the United States, by Aptheker"?

Mr. Lewis: This is objected to as not proper cross examination.

Objection overruled.

A. Yes, I did see that book and that, again, comes in the classification of books criticizing phases of the United States but not being what I would refer to as a history of the United States; it was a treatment on one particular phase very derogatorily of the United States.

Mr. Nelson:

Q. You mean this book that we speak about now, the "Negro Slave Revolts" when he described the efforts of the slaves to free themselves was derogatory treatment of the issue of slavery?

A. The book was prepared and presented in such a way as to cast a reflection on the democracy of the United States. I don't say——

Q. You mean cast a reflection on the democracy of the slavocracy when the Southerners were in power, before the Negro people were freed?

A. No, I'm not defending slavocracy——

[fol. 1107] Q. Well——

A. I say that this was not a history book. A history book, as everyone knows, treats of certain eras. A history of the United States would embrace many decades, and perhaps even a century or two——

Q. All right, we're not going into that——

A. I'm giving you my definition of a history, and I say there was no such history, but there were many books there treating of various phases of activity in the United States.

Q. Then do you recall a book by the same author called "Negro In The Civil War"?

A. Yes.

Q. That also is treating historical facts relating to the Negroes in the Civil War and they are part of the history of the United States, aren't they?

A. Well, Mr. Nelson, I must repeat that there were books treating of certain phases in American life——

Q. All right——

A. (Continued:) ——and they all formed part of a pattern of condemning the United States, they were all propaganda in the attempt to distort the phase of the particular subject which was under discussion.

Q. Are you saying that this book "Negro In The Civil War" was a kind of a book that attacked the United States in a derogatory way?

[fol. 1108] A. I say that the Communist pattern, as I observed it from this literature, was to demonstrate that there should be a Negro Republic in the United States. The Negroes were called upon to revolt against the United States Government——

Q. Just a moment.

A. (Continued:) ——and this book——

Q. Just a moment. Does this book, Mr. Musmanno, deal with the question that you are saying?

A. No, it is part——

Q. All right, then——

A. (Continued:) It is part of all the literature——

Mr. Nelson: Your Honor, I ask that he answer my question. I asked him about a specific title and the man ought to confine himself to the——

The Court: We will ask the witness to respond precisely to the question.

Mr. Nelson:

Q. So that this book, "Negro In The Civil War", called for—that is, was an explanation of the role of the Negroes in an attempt to free themselves from slavery; is that right?

A. Yes, it treated that subject.

Q. And, therefore, it could be said that it is a leaf in the [illegible] page of American history, couldn't it?

A. Yes, a leaf.

Q. All right.

A. (Continued:) It could be a leaf but not an entire book.

Q. Well, don't we have many separate chapters dealing with history that don't necessarily have to be all inclusive, deal with everything under the sun in order to cover an important phase in the history of our nation?

A. That is right, but I did not see one leaf there speaking well of the United States, not one leaf, and there are many leaves in the history of the United States which could well be talked about in a very praiseworthy manner——

Q. I see——

A. There was nothing there——

Q. You mean, Mr. Musmanno, that these two titles that I have referred to here, "The Negro Slave Revolts" and "The Negro In The Civil War" is a derogatory treatment of a question in our history, and important issue in our history?

A. It was a treatment of the subject indicated but it was not a history and that's the point that I made, and it formed part of a pattern of constant criticism of the United States. There was not one book there which said one kind word about the United States, and certainly you must admit that there were some kind things that could have been said about the United States.

Q.

Q. Well, Mr. Musmanno, in this case I'm pretty sure that your characterization of these two books would be [fol. 1110] something like John Rankin's, or Congressman Woods——

Mr. Lewis: I object to this.

Q. (Continued:) ——who seems to be a special friend of yours——

Mr. Lewis: This is objected to and I ask that it be stricken from the record.

Motion granted.

Mr. Nelson:

Q. Did you see a book at the time you went to the headquarters called "The National Labor Union, by Silvus"?

A. Yes, and Silvus is the man that called upon the people to revolt, if necessary, and to have a little blood letting in the United States in order to achieve their aims. Silvus is one of the bigoes of the Communist Party who sanctioned violence——

Q. When was that?

A. (Continued:) ——and he is mentioned in your Constitution of the Communist Party——

Q. Wait a minute. When was that? When was that?

A. It was shortly after the Civil War period.

Q. I see. It was about a hundred years ago, is that right?

A. Yes, but the pattern was just the same, and you hold him up as a hero——

[fol. 1111] Q. Just a minute, Mr. Musmanno. And you say that this man Silvus advocated the overthrow of the Government of the United States; is that what you are saying?

A. No, I didn't say that. This is what I say, that he made the declaration that in order to achieve the ends that he was aiming for at the time on behalf of those he represented, that an election could bring about those results, but if the results could not be attained through the forces of an election then a little blood letting would be necessary.

Q. Isn't it true, Mr. Musmanno, that Mr. Silvus was the

first president of a National Trade Union before the Knights of Labor was organized in the United States?

A. That is true, but I didn't——

Q. He's the one, wasn't it—he was the one who organized the first all-embracive Union of workers in this country before the Knights of Labor was established?

A. Yes, that was in his biography. But I didn't see any book there commending Samuel Gomphers, or Mr. Green, or any of the other leaders of the American Labor Movement. You selected only this one man, who advocated violence, to praise.

Q. All right. Did you at the same time find a book there called "Negro Abolitionist Movement", by Aptheker?

A. Yes.

Q. So then it is true, Mr. Massiamo, that there were other books there besides books dealing with Russia, as [fol. 1112] you stated here under oath?

A. Well, I said that this mass of literature could be classified as containing books, pamphlets, reports, handbills and so on, either glorifying Russia or degrading or criticising the United States.

Q. All right. Could you or could you not buy copies or get copies of History of the United States at the Democratic Party headquarters if you went over there now?

Mr. Lewis. This is objected to——

A. I don't know whether you could, but I am sure you couldn't get any Constitution of the Communist Party, you couldn't get 500 books on the Biography of Joseph Stalin——

Mr. Nelson:

Q. All right, now——

A. (Continued:) ——you couldn't get 200 copies of the Soviet Spirit; you couldn't get copies of the Russian Flag——

Q. Now wait a minute——

A. ——you couldn't get the Communist Manifesto; you couldn't get State and Revolution; you couldn't get Dictatorship of the Proletariat; you couldn't get any Russian literature such as you refer to.

[fol. 1113] Mr. Nelson: I move that this all be stricken, your Honor.

The Court: The motion is granted insofar as it elaborates. The answer to the question was he didn't know whether you could get a History of America at the Democratic Party headquarters.

Mr. Nelson: The man could have answered the question but he is interested in making propaganda here, making prejudicial remarks——

Mr. Lewis: I object to that little speech.

The Court: We have granted your motion. We will strike your remarks from the record too.

Mr. Nelson:

Q. Then I believe that you did say yesterday, did you not, Mr. Musmanno, that this literature is so dangerous that it ought to be kept away from the American workers?

A. This literature is dangerous and should not be circulated because running through all of it there is the pattern of an appeal to violence, to force, to overthrowing the Government of the United States and the Government of the [fol. 1114] Commonwealth of Pennsylvania by revolution, and I say that that is dangerous literature.

Q. Then, Mr. Musmanno, your position approaches this statement here very closely, "We must keep the worker away from this Red literature"?

A. I explained yesterday that the word "Red" in a statement of that kind—and you yet haven't indicated the source of it—is colloquial. "Red" has no specific meaning unless it applies to something very definitely before the eyes of the individual. I have referred to this literature as "seditious" literature, as literature calling upon the reader to take up arms against the Government of the United States.

Q. Well, you are so anxious about the source, I'll tell you who it was. It was Al Capone who said that——

A. Is he a good friend of yours? I would imagine he would be——

Q. He's a good friend of your Mr. Margiotti——

A. You've been carrying that around——

The Court: As I told you before, let's forget personalities and keep them out of this. I have ruled on that many times.

Mr. Cercone: Your Honor, this defendant keeps bringing these things up and certainly the witness has a right to answer them.

The Court: No, he doesn't.

[fol. 1115] Mr. Cercone: I don't know what he can do then.

The Court: You have a right to object.

Mr. Cercone: Well, we object but we would like to give the reason.

The Court: When your objection is ruled on the matter will be stricken, if necessary, and the jury has been informed many times to disregard those things. I'll admit there is a tendency on the part of any witness, particularly one who is interested in this matter, to respond. I appreciate that.

Mr. Nelson:

Q. I think it was yesterday afternoon, toward the close of the day, that the question of Albania came up. You stated, did you not, that the Communists overthrew the Government of Albania by force and violence?

A. I didn't say that the Government was overthrown by force and violence. I said there was——

Q. Well, just a minute, Mr. Musmanno. We are speaking now about Albania, precisely about what took place. Will you answer the question?

[fol. 1116] A. Yes, I will. I am answering it. I'm answering it.

Q. All right.

A. I said there was not one instance where a Communist government had taken over in the world where they came into power through an open and free election, but that they came into power only through assassination, coup *de tat*——

Mr. Nelson: I object to this, your Honor. I asked him a specific question, whether or not he did so testify. If he didn't he can say he didn't.

The Court: All right. Put your question again——

Mr. Nelson: He gives these harangues when he testifies——

The Court: Whether he testified that the Communists had taken over in Albania by force and violence?

Mr. Nelson: That's the question.

The Court:

Q. Did you testify to that?

A. I testified all embracingly the countries in which the Communists had taken over, and I said in no instance did [fol. 1117] they come into power through the ballot box and free election, and that includes Albania.

Mr. Nelson:

Q. It is true, isn't it, Mr. Musmanno, that the government that you are speaking about that was overthrown in Albania when the Communists came to power was the Quisling government of the Germans that they set up during their occupation of Albania, and the people of Albania and the partisans who were known as Communists overthrew that government because there was no chance of election, there was no chance to discuss the matters, and they had no other recourse except to use force and drive out the Nazi agents and the Italian agents who were there at the time; isn't that true?

Mr. Lewis. This is objected to.

Objection overruled.

A. It is the argument of the Communists at all times——

Mr. Nelson:

Q. Mr. Musmanno, will you please——

A. Well, I am answering it.

Q. Will you admit, first, whether it was so or not so?

A. Yes, the Communists used force and violence and bloodshed in order to take over the government of Albania, [fol. 1118] as you have yourself now stated. The Communists always say there is no opportunity for an election and so, therefore, have to kill a few thousand people for the benefit of the people, which doesn't help the people very much, especially those who were killed.

The Court:

Q. Well, the next question was whether the government of Albania was a Constitutional government or whether it was a Quisling government set up by the Nazis at the time

it was taken over by force by the Communists. Do you know?

A. I know that the Communists took over that government by force and violence and did not give the people of Albania an opportunity to decide who their ruler should be, and they now hold it in the tight fist of Soviet rule.

Mr. Nelson:

Q. Well, that's an interpretation and not an answer to my question—?

The Court: You are asking for a lot of general things here——

Mr. Nelson: I want to be sure that at least these things we go into, so far as they have been raised before the jury, that there is no wrong impression created as to what happened in certain places that he knows very well, but he's a [fol. 1119] reluctant person to admit the truth when it's against him.

The Court: Well, that's for your argument to the jury; if the witness doesn't respond fully or according to your desire, of course, that's a matter of argument, you can argue that to the jury. All I can rule on is whether or not he does respond sufficiently.

Mr. Nelson: That's all, your Honor.

The Court: You mean that's all of the cross examination of the witness?

Mr. Nelson: I can't do it because I haven't gotten the record to prepare needed material. If the Court would grant me the right to recall this witness later when I get this material prepared. I've been working under a handicap, I was sick, as you know, I haven't recovered yet and I haven't been able to prepare this material; if the Court will grant me to go into the matters that still could be gone into if I so desire, I would appreciate if the Court would grant [fol. 1120] me the right to recall the witness and go into that question.

The Court: Well, I certainly can't detain the witness here indefinitely. I had expected in order to pursue this matter as fully and as quickly as possible to, if necessary, go into a night session today and continue tomorrow. If that will enable you to prepare any material I will be very happy to have the witness remain at your disposal all day today, or

during the evening, or all day tomorrow, but I can't just——

Mr. Nelson: How about, your Honor, if we had a day off and start off on Monday. It would give me a few hours to prepare. I just got Exhibit 43, that's as far as the transcript went, and I got that last night very late. I couldn't keep notes when this witness was testifying, on all the quotations and so forth, and the Prosecution has most of the exhibits——

The Court: You haven't been asking about the quotations which he has given from these books particularly; you have [fol. 1121] been asking more of his interpretation of certain books——

Mr. Nelson: That's all I could do before I had the actual quotations in front of me, your Honor.

The Court: Well, I can't grant any concessions along that line beyond what I have suggested, Mr. Nelson.

Mr. Nelson: Well, it's impossible for me to go into that question and therefore it becomes impossible to cross examine this witness on these matters.

Mr. Lewis: These books are all here, they are in evidence, he can use them if he wants them.

Mr. Nelson: They aren't easy to grab and just go ahead and quote. The quotation has to be—the ones that he made have to be presented the way he interpreted them, and then how they would sound if they were in the full setting.

The Court: That's the reason I suggested to you, Mr. [fol. 1122] Nelson, that probably it would be better for you to advance to the jury in direct testimony yourself, supported by excerpts from these books, your interpretations, your intents, your ideas concerning these, rather than ask and elicit from this witness his opinions, because, for the most part, they are adverse to you and you recognize that. So that the jury may have the benefit of both interpretations, rather than elicit from the witness his interpretations which can be expected to be adverse to you, it would be better to have you submit your interpretations supported by excerpts from these books to the jury by way of defense.

Mr. Nelson: Except that there are a number of things that I believe should be presented to the jurors in the presence of this witness so he can either admit or deny some of the statements that he made here on the stand about these quotations.

The Court: Well, the only thing that I can see that he can admit or deny—the books are in evidence, the quotations are [fol. 1123] admitted that they are in the books, all you are asking him to affirm or deny is whether or not his interpretations of those passages is correct.

Mr. Nelson: Well, I believe, your Honor, that a few days preparation would make it possible for me to conduct a cross examination of those questions, otherwise I can't do it.

The Court: Well, your request is noted. It will be refused and an exception noted.

Mr. Nelson: I think it ought to be also noted, your Honor, that the Court pressed me very hard in terms of time——

The Court: Oh, the record is full of my urging of you, as well as the other side of this case, to commence the trial of it, to proceed with the trial of it without delay, and it is my purpose and I will state it expressly, my purpose is to see that it is completed as soon as possible.

Mr. Nelson: No, you didn't get my point, your Honor. [fol. 1124] I am making another objection here that I was being pressed to speed this trial since it started, and I had a tremendous disadvantage because I wasn't well, and——

The Court: Well, that's all on the record.

Mr. Nelson (Continuing): —and I have to go through this trial with a low blood pressure——

Mr. Lewis: I object to all this in open Court. If he wants to make his objection, let's go——

Mr. Nelson (Continuing): —and it was hard for me to prepare and to keep up with these things, therefore it makes it impossible to conduct the proper kind of cross examination and it becomes an unfair trial in that respect.

The Court: Well, we have ruled on that, Mr. Nelson, and we have overruled your objections in that respect before, and we do so again. You will either proceed with cross examination, or we will have the witness at your disposal all during the day, or I'll even request him tomorrow, if we pro- [fol. 1125] ceed tomorrow, to be present, but beyond that I cannot compel his attendance.

Mr. Nelson: I certainly am opposed to night sessions, your Honor. I can't possibly do it.

The Court: All right. Then if there is no further cross

examination of the witness, proceed with the next witness, unless there is some redirect.

Mr. Lewis: I have a few questions here in redirect. I would like to marshal them and if we could have a five or ten minute recess I will be ready.

The Court: I, of course, appreciate that you are asked to reexamine your witness here unexpectedly because of the termination of the cross examination. We will grant you five minutes to marshal your material.

Recess.

[fol. 1126] After recess.

Michael A. Musmanno, recalled, resumed his testimony as follows:

Redirect examination.

Mr. Lewis:

Q. While you were being cross examined Mr. Nelson made reference to the Mussolini regime in Italy during the time that you were there. Did you have anything to do with the Mussolini regime?

A. I had nothing whatsoever to do with the Mussolini regime. I went to Italy as a student to study at the University of Rome, to study Roman law and other cognate subjects, just as students did from all over the world. There were American students there by the hundreds in Rome, studying various phases of Latin history.

Q. Did you ever criticize the Mussolini regime while you were there?

A. I did.

Q. Where did you criticize it?

A. At the very University of Rome at which I was a student and where I also gave instruction in English. I made a speech against Mussolini and the Fascist regime.

Q. Do you know whether or not that speech was ever printed?

A. I do know.

(Commonwealth's Exhibit No. 161 marked for the purpose of identification.)

[fol. 1127] Q. I show you Commonwealth's Exhibit No. 161 and ask you what that is, if you know?

A. That is an Italian newspaper called La Riviera, that was published in Naples.

Q. When?

A. On June 23, 1943.

Q. Now, is this speech that you referred to contained in this newspaper?

A. Yes. The speech has an article which is in Italian, of course, the title of the article is, "E' un governo o qualche altra cosa?" "Is it a government or something else," is the translation, and this carries the speech which I delivered and it carries the date, the 25th of April 1925.

Q. Under what circumstances was this speech printed in 1943 in this Italian newspaper in Naples?

A. This newspaper had been suppressed by the Fascist regime, then when we liberated Rome a soldier conversed with a student who had been at the University of Rome in 1925 at the same time I was there, and he had with him a copy of this speech which I had reduced to writing and circulated among the students because, as I say, they were studying English and also I wanted to be absolutely accurate in my remarks, and that speech then was reproduced in this Italian newspaper.

(Commonwealth's Exhibit No. 162 marked for the purpose of identification.)

[fol. 1128] Q. Do you know whether or not the speech that you made in Italy during the Mussolini regime before the students at the University of Rome was ever reproduced in English paper?

A. Yes, I do know.

Q. I show you Commonwealth's Exhibit No. 162 and ask you what that is, if you know?

A. This is a newspaper published in Greensburg, Pennsylvania, this issue is dated August 18, 1944.

Q. Do you know, under what circumstances this speech was reprinted in the Greensburg paper in 1944?

A. That Italian newspaper got to the United States and the speech therein, with the accompanying circumstances of its delivery, was reproduced in this English or American

newspaper, and this article contains an English translation of that Italian speech.

The Court:

Q. That's the same speech that you discussed on cross-examination as having been delivered to the English class at the University of Rome?

A. That's correct, your Honor.

Mr. Lewis: We offer in evidence Commonwealth's Exhibit No. 161 which is the Italian translation of the speech, and Commonwealth's Exhibit No. 162 which is the English [fol. 1829] translation of the speech and ask permission of the Court to read to the jury this English translation of the speech that the witness made at the University of Rome.

Mr. Nelson:

Q. This is—I believe this paper La Riviera was put out in June 1944—June 22nd, right?

A. That's right, immediately after the liberation of Rome.

The Court: Very well.

(Mr. Lewis reads the exhibit to the jury as follows:)

"We reproduce here the speech made by Lieutenant Commander Michael A. Musmanno at the University of Rome, on April 25, 1925:

"As an American, perhaps I should not talk on Italian politics. But I believe that as intelligent students preparing for your life's work you would be interested in knowing the reaction of an American to the tremendous force which has entered into your public and private lives. Imagine Fascism can no longer be regarded as a mere political party. [fol. 1830] In America we have the Republican and the Democratic Party and while their respective policies do affect the economic and social life of the nation, an American can live a whole lifetime pursuing his normal vocation unconcerned about the political maneuvering of either party. But point out to me one child in Italy whose life will not in some vital manner be affected by Fascism.

"Therein lies the danger of Fascism. It enters too much into the private life of every citizen. It is being mixed with

the milk of the children, it is being baked into the bread of the aged, it is being served in every dish that is placed before the citizenry of the nation. Therein I see a great peril. Politics is not a regimen of daily life, it is not a creed, it is not a menu. It is simply a science of government, and as all important and all vital as government is, we would never think in America of painting Santa Claus or Dan Cupid Republican or Democratic. Love of country, desire for a comfortable living, ambition for success in one's professional career, should have nothing to do with any particular party. But the prevailing party in this country [fol. 1131] seeks to make Fascism the symbol of patriotism, it strives to depict any one who differs with the head of that party as a traitor. This can only lead to grave consequences.

"There has not yet lived the man who having absolute power did not lead his subjects into misery and disaster. By the very nature of things power brings a desire for the exercise of that power. Absolute sovereignty leads to war and war for a country like Italy can only bring in its trail the greatest desolation for its people.

"I do not say that the present leader of the Italian Government has absolute power. There is still a parliament, but in this parliament we have seen that one opposes the government at great peril, not only politically but physically. The Matteotti incident is one which cannot be lightly passed over, even if it is established by a court of law that the culprits were in no way acting with the connivance, if not at the direction of the political party in power.

[fol. 1132] "The bellicose utterances of the present leader of the Italian government can only be viewed with regret by one who comes from a democratic country. Ultimata fiercely made by a person of pride must be fiercely maintained and in the resulting engagement the masses, who know nothing of the reason for the defiant utterances, are the ones who must make good the defiance.

"It is a mystery to me how one can listen with indifference to the present leader's constant disparagement of popular government. Some, of course, accept his extreme statements with self-imposed modifications, assuming that since he has accomplished some good public works he cannot intend the full import of his verbal condemnations. I will confess that in the early days of my sojourn in Italy I too

was impressed by the projects of road building, train regulating, water line installations initiated and carried to fruition by this government. In Southern Italy I saw little towns with running water which for the previous century have had to depend upon the slightest trickle of moisture coming down mountain sides or laboriously drawn up from [fol. 1133] half dry wells. But what will I think if, through the despotic power which the duce is gradually assuming, he turns this running fountain of water into a gushing fountain of blood as the result of a war into which he may plunge the nation without their desire or even advance knowledge?

"That is something for you to think over, my youthful friends.

"Fascism started off with being a political party. It developed into a revolution, it became the government. Is it now becoming something else? Is it becoming the nation itself?

"You are training to become lawyers, doctors, diplomats, business men. Will you have the opportunity to exercise your various professions, or will you become the mere puppets of an absolute power to be ordered about as it suits the ideas and even whims of that would-be Caesarean power?

"Perhaps I am painting a too dismal picture, but I know history can repeat itself. And I know that there is nothing [fol. 1134] in the lives of Napoleon, Frederick the Great or even Julius Caesar, whom the duce seeks to emulate, that assures me that for the average citizen under their power, there can be anything other than mental slavery, moral imprisonment and physical destitution.

"My friends, if I have only given you something to think about, my little effort here has not been entirely in vain."

Mr. Lewis:

Q. Now, is there any analogy between the literature that was confiscated here and which we have introduced in evidence, and the Sacco Venzetti case which was referred to by the defendant on cross examination?

A. No, there is no analogy. The literature which was the subject of discussion in the chapter in my book from which the defendant read was philosophical literature insofar as I was able to ascertain, but this literature which I obtained in the Communist headquarters in Pittsburgh in the Bake-

well Building is a literature which urges the reader into force and violence.

Mr. Nelson: I object to this, your Honor. I believe that this is the wrong way to go about this question. I think he is making a speech here, giving opinions. I believe it's [fol. 1135] wrong.

The Court: Well, I agree with you to that extent, so far as opinions are concerned. This is redirect examination and I will have to limit you to facts now rather than expressing opinions concerning this book or the other books that were offered in evidence. The witness does have the right, however, to explain the different factual situations found at the time of the Sacco Vanzetti incident and the present situation here involved in this proceeding since the matter was brought up by the defendant on cross-examination, but to give opinions I think we will have to limit the witness insofar as opinions are concerned. One book was written on a factual situation at another time and if the witness wishes to distinguish that factual situation as cause for the writing of the book at one time, he may do so.

A. I can go on from there?

Q. You understand—

A. Yes.

[fol. 1136] The Court: Just don't give opinions, just distinguish the basis for the two books or the various books based on facts.

A. Yes. I don't happen to have a copy of my book "After Twelve Years" here. I don't know whether the defendant has that same copy. If he hasn't—if I had it of course I could point to the pages more readily and make my answer a little more specific, but since it is not here—

Mr. Lewis: I think it was marked as an exhibit, wasn't it?

The Court: Exhibit "A" I believe.

Mr. Nelson: I'm sorry, I didn't bring it down.

A. (Continued) Well, reference was made to a Red scare. The word "scare" was in quotation marks, and the very quotation marks would indicate that the author did not use that term as part of his own language and did not

necessarily agree with the use of the word in that connection. That was a period when there were indiscriminate arrests and innocent people were taken into custody. The manner of the arrests were in many instances illegal and not under the mantle of the law. There were no warrants of arrests, there were no warrants of search and seizure. [fol. 1137] So that period can in no way, the period of 1919-1920 which was referred to in my book "After Twelve Years," can in no way be compared with what happened in 1950, when after going before a Judge of the Courts and swearing, taking an oath to certain facts, a warrant of arrest was issued, provision made for bond, and then the arrest took place. At the same time that the information, we use "information" in a technical sense, that's the paper with which you begin a criminal prosecution, at the same time that was sworn to another oath was taken to the necessity for a search and seizure warrant, and this also went before a Judge of these Courts, and in due course, always in accordance with the law, a search and seizure warrant was issued and this search and seizure warrant was served by police and by County detectives, as also was true of the warrant of the arrest. So there is no comparison whatsoever between that situation which I described in that chapter in my book "After Twelve Years" and the situation which existed in 1950, there is no analogy whatsoever, any more than if I had described the illegal things done by the British Redcoats prior to our Revolutionary War; that was simply historical of a phase which I criticized and criticized very severely, and can in no way be compared with what happened in this instance where the law was very rigidly and conscientiously adhered to.

Q. Now, the defendant asked you if you didn't initiate this prosecution because you were going to become a candidate for Lieutenant-Governor. Now, did you ever, prior to [fol. 1138] that time, criticize the Communist Party or take any steps against it?

A. I did.

Q. And when did your activity against the Communist Party first begin?

The Court: Isn't this repetition? Hasn't the witness described all of his activities beginning with his term as

Legislator, and the submitting of Bills and so forth? If there is anything else you want to bring out I won't interrupt, but just avoid repetition.

Mr. Lewis: Well, we're trying to. I was—

Mr. Nelson: May I place a question, Mr. Lewis? I believe the question—the proper question at this time would be to go over those matters that I raised in the cross-examination.

The Court: Well, I think that's what they are doing.

Mr. Nelson: If Mr. Lewis recalls, and I think it's clear here that I raised when I spoke about what matters he took up at various times I asked specifically about one [fol. 1139] question, about Bills that he introduced, it wasn't the speeches that he made here and there, and I believe if he goes into those they are out of order.

The Court: Well, I think we have covered the subject pretty thoroughly. If there is anything you have omitted, why you may elicit it from the witness.

Mr. Lewis: I think one Bill was mentioned but I think that was all. I don't think there was anything else mentioned.

The Court: Well, it was resubmitted at the next session and then that there were inquiries or requests made to subsequent Legislators to present Bills.

Mr. Lewis: My question is did he do anything in addition to merely submitting a Bill in the Legislature, anything in addition that he did against the Communist Party.

[fol. 1140] The Court: Well, if there is anything in addition that the witness has to offer we will accept it.

A. The defendant

Mr. Nelson: Your Honor, I object because I think you have opened up a wide field here. If he's going to go ahead into these matters I think they ought to be those questions that we took up on cross examination and not things that he would like to bring in here at this time in a general sort of way.

Mr. Lewis: The defendant opened it up.

The Court: Yes, that's the point.

Mr. Nelson: I didn't open it up, your Honor. I opened up specifically, "What Bills did you introduce in the Legislature to outlaw the Communist Party?" Those were my words.

The Court: Well, you were reflecting upon the sincerity of the prosecution, and the motives and so forth, and whether it was to further his political ambitions, and I think he has [fol. 1141] a right to answer on that, Mr. Nelson. We will permit the question to be asked, but please don't cover any matter that has already been touched on.

Exception noted.

A. The defendant used the phrase "Johnny come lately" in this fight against Communism. In 1926 I introduced a resolution at the Convention of the American Legion in which I stated the following——

Mr. Nelson: Well, your Honor, the paper he wants to read here is not in evidence. I don't know how he can do these things.

The Court: Oh, I don't think—I think if you just ask the witness where and when he did such a thing, without saying just what he did in detail, Mr. Lewis, that that will suffice.

Mr. Lewis:

Q. Well, in 1926 you introduced a resolution at the American Legion Convention?

A. Yes, I introduced a resolution at the American Legion Convention which was held at the Delaware Water Gap, in which I called upon the American Legion to recommend [fol. 1142] to the National and State Legislatures that laws be enacted which will outlaw the Communist Party in the United States and subject all members of the Communist Party to prosecution for seeking to destroy our Government.

Q. Now, any other activities?

A. In 1926, '27 and '28, the coal miners in this part of the State went out on strike; the Communist Party came in here and attempted to break up the Coal Miners Union.

Mr. Nelson: Your Honor, this is an opinion of this man and I don't believe it's proper in connection with that.

The Court: Yes, just tell us.

A. I condemned the Communist Party for——

Mr. Nelson: Your Honor, these things are being done against my objection.

The Court: Yes, we will note your objection.
Exception noted.

A. (continued)—because of the activity of the Communist Party intending to destroy the United Mine Workers and thereby working with the coal operators, I made a [fol. 1143] public statement——

Mr. Nelson: Your Honor, I move to strike this stuff. He knows this is nonsense.

The Court: Please limit yourself. Not the basis of it, just what you did, please. You introduced a resolution to the American Legion, you took some action in connection with the activities of the Communist Party in the mine strike——

A. (continued) For hours the defendant attempted to establish that I did this only because I was a candidate for Lieutenant Governor, and this is merely a very brief reference to what I did from 1926 on to the present.

The Court: Well, the reason for you doing these things—just tell us what you did rather than the basis of what caused you to do it.

A. All right. In 1925 I introduced a resolution at the American Legion Convention in Scranton, which carries in its Preamble: "Whereas the action of the Communist Party in Pennsylvania in aligning itself with the coal operators in Western Pennsylvania and helping to bring about turmoil, disorder, riots and dissension——

[fol. 1144]

Mr. Nelson: Your Honor, I move to strike. Your Honor, I object to this.
Objection overruled.
Exception noted.

A. (continued) "—so as to disorganize and break up the United Mine Workers of America in that area, is indicative of its evil character and purpose." Then there are several other whereas clauses and then I finish by saying, "Therefore, be it resolved here in Scranton at the American Legion Convention of Pennsylvania that the Communist Party be condemned and censured as an organization, and that the Commonwealth be recommended to prosecute such indi-

vidual members of the Communist Party as have been guilty of crime in the disturbance in the coal fields of Western Pennsylvania.'' Then in 1929 I introduced a Bill in the Legislature. In 1935 I introduced a resolution at the American Legion Convention at Wilkes Barre, which begins, ''Whereas, the American way of life is under attack by three evil influences in the United States, namely, Communism, Fascism and Ku Klux Klanism. Whereas, Communism stands for revolution and atheism, Fascism stands for tyranny and oppression, and Ku Klux Klanism stands for racial and religious prejudices; all of which are contrary [fol. 1145] to the spirit and the letter of American institutions. Whereas, if not curbed all these monsters of evil will bring trouble, strife, dissension and bloodshed to the United States. Therefore be it resolved in Convention assembled here in Wilkes Barre, that the American Legion, Department of Pennsylvania, go on record as opposing every person, every group and every society adhering to the policy and program of these three un-American activities, and calling upon our National and State Government to pass laws to prevent their encroachments upon the liberties and the free institution of the American people——

Mr. Nelson:

Q. Just a minute. Was that published anywhere, Mr. Mustoarmo?

A. The resolutions of the American Legion usually appear in the Press of that day.

Q. What day was that?

A. That was in 1935.

Q. What date?

A. I don't have the date. It was at the convention in Wilkes-Barre, it was during the Summer or early Fall——

Mr. Lewis: It would be July, probably.

A. (continued) Well, I know they had a big parade there so it must have been in good weather. I recall that we didn't wear any heavy garments.

[fol. 1146] Mr. Nelson:

Q. But you have no clippings of any sort I could check because——

Mr. Nelson: Your Honor, you are permitting him to read a biography. I don't know what this is. He might have written this yesterday.

A. I presented it to you the day before yesterday, Mr. Nelson——

The Court: Let's not get into any arguments.

A. Well, he has made that statement and it is not correct——

The Court: I have asked you please not to read the substance of these. You can tell us you presented a resolution at the American Legion, you presented a resolution at the miners' convention, you presented a resolution somewhere else, but don't give us the substance of it. It is not in evidence.

Mr. Nelson: I move to strike this because these are prejudicial remarks snuck in in this manner.

The Court: We will strike the substance of the last one, it is not in evidence, and we will strike the substance of [fol. 1147] it as read by the witness. We will let him tell us it was a resolution condemning, or just in general terms the action of the Communist Party, or advocating that action be taken against it or individuals, but the papers are not in evidence and we are not going to encumber this record by reading them into evidence. So if you will just tell us what occasions, and whether it was a resolution in the nature of condemnation or asking that action be taken, I think we can answer any inferences that the defendant wishes to be drawn concerning the motives or prejudices of this witness.

A. Very well. In 1940 I introduced a resolution condemning Russia for allying herself with Nazi Germany in the invasion of Poland and the beginning of another World War, and I declared it a crime against international law and against humanity.